

In the Matter of: )  
 )  
Examining Critical Issues in ) Docket No.  
Licensing of Thermal Power ) 00-SIT-2  
Plants and Related Facilities )

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

Robert Pernell, Associate Member

Ellen Townsend-Smith, Commissioner Advisor

Scott Tomashefsky, Commission Advisor

STAFF PRESENT

Richard Buell

Eileen Allen

Pat Angel

PUBLIC ADVISOR

Roberta Mendonca, Public Advisor

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## 1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Ladies and  
3 gentlemen, good morning. My apologies for holding  
4 everybody up. My name is Robert Laurie. I serve,  
5 along with my colleague, Commissioner Pernell, to  
6 my right, as the Commission's Siting Committee.

7 And the purpose for this workshop is --  
8 well, it's one of a series. And its purpose is to  
9 examine potential barriers to long-term licensing  
10 of power plants. The results of this workshop and  
11 other information being gathered will be  
12 incorporated into a report that will be prepared,  
13 presumably in April, but since there is no  
14 statutory mandate, who knows. But that's our --  
15 our best guess at this point.

16 Mr. Buell, who would like to take the  
17 lead regarding introductory comments and -- first,  
18 let me complete introductions on the panel.

19 Again, to my right, is my colleague,  
20 Commissioner Robert Pernell. To my left is my  
21 advisor, Scott Tomashefsky, and to Commissioner  
22 Pernell's right is Commissioner Pernell's advisor,  
23 Ellie Townsend-Smith.

24 Commissioner Pernell, did you want to  
25 offer comments this morning, sir?

1                   COMMISSIONER PERNELL: No, I don't have  
2                   any particular thing to say, other than welcome,  
3                   and appreciate everyone being here.

4                   MR. BUELL: Yes. For this morning we  
5                   have, for Staff, they'll make a brief overview of  
6                   their Staff paper, is Eileen Allen, and --

7                   PRESIDING MEMBER LAURIE: Let me  
8                   interrupt you. Can people hear? Let me tell you,  
9                   I can't hear. Can people in the back row hear Mr.  
10                  Buell when he -- yes. Okay. Sir. Okay, thank  
11                  you.

12                  MR. BUELL: We have Eileen Allen and Pat  
13                  Angel. They will make a brief presentation for  
14                  Staff on the topic of Land Use. Dale Edwards is  
15                  also available in the audience should we want to  
16                  talk more about the environmental justice issue.

17                  With that --

18                  PRESIDING MEMBER LAURIE: Okay, thank  
19                  you. And for all speakers, these microphones are  
20                  really directionally oriented, so you have to get  
21                  really close. Okay?

22                  Good morning.

23                  MS. ALLEN: Good morning. I'm Eileen  
24                  Allen. I'm the supervisor for the Energy  
25                  Commission's Facility Siting Group, Land Use and

1 Traffic and Transportation Unit. As the energy  
2 picture changes daily and weekly, we're very  
3 interested in hearing about the participants'  
4 ideas on Land Use Constraints, local concerns and  
5 needs, and the concerns of the advocacy groups.

6 We're busy, and we think you're busy,  
7 but we still need to hear from you, so I  
8 appreciate your taking this time today to come and  
9 talk with us.

10 One of the broad discussion areas that I  
11 am most interested in is hearing how can the  
12 state's need to insure reliability of the energy  
13 system be balanced with local control over land  
14 use decisions. We're actually seeing whether  
15 there are options for a more collaborative local,  
16 state and regional planning process. Currently,  
17 the power plant project developers largely present  
18 us with a proposed site, and we evaluate them.  
19 But we'd like to hear from you today, your ideas  
20 about whether there are practical alternatives or  
21 approaches that are less reactive.

22 I'm going to turn it over to Pat now,  
23 who's going to summarize the paper.

24 PRESIDING MEMBER LAURIE: Thank you,  
25 Eileen.

1                   Good morning, Pat.

2                   MR. ANGEL: Good morning. Again, my  
3                   name is Pat Angel, and I'm on the Staff of the  
4                   CEC, evaluate land use issues associated with  
5                   power plants siting.

6                   I'm going to give you a real brief  
7                   overview of what was provided in the paper which  
8                   was released in February. The paper provides an  
9                   overview of the land use analysis that's typically  
10                  conducted for power plant permitting applications,  
11                  and provide a brief overview of the analysis that  
12                  is typically done by Staff to evaluate land use  
13                  issues, which, obviously, includes compiling data,  
14                  consulting local agencies, do a site review,  
15                  evaluating environmental justice issues. And it  
16                  also provides an overview of the constraints  
17                  identified by Staff associated with land use in  
18                  power plant siting.

19                  One thing to -- to note, and I'm sure it  
20                  will be discussed at length, is that land use  
21                  issues tend to vary very widely, depending on the  
22                  power plant project. That's largely involved with  
23                  the fact that land use is a local responsibility.  
24                  The state does not have much direct land use  
25                  authority; therefore, the agencies vary widely on



1       how they deal with power plants.

2               Some include very clear and specific  
3       requirements and design parameters in their  
4       general plans and ordinances. Others are very  
5       unclear, and in some cases some appear to be  
6       almost exclusionary, to keep such facilities out  
7       of their communities.

8               As outlined in the paper, the -- if  
9       there are land use issues, they're commonly  
10      identified as land use compatibility issues, both  
11      direct and indirect. The land use issues  
12      associated with infrastructure requirements of  
13      power plants is getting facilities to power plant  
14      projects. The opportunities and constraints  
15      associated with looking at urban sites for power  
16      plants versus rural areas, as well as constraints  
17      associated with looking at and considering  
18      consistency with both local development standards,  
19      as well as obtaining local agency participation in  
20      the review process. That also includes  
21      consideration of regional agencies, such as  
22      LAFCOs, federal agencies, the FAA, and other such  
23      entities, as well as issues that sometimes occur  
24      because of information, or lack thereof, in  
25      applications for power plants.

1                   It also includes a series of  
2           recommendations that Staff has suggested as  
3           possible ways to improve the process. And at that  
4           point, I will pass the mic to Eileen.

5                   PRESIDING MEMBER LAURIE: The basic  
6           conflicts in -- in locating power plants in urban  
7           versus rural areas are as follows, as I understand  
8           it. One, the load, or the demand is in the urban  
9           areas. I think that's understood. But because  
10          the demand is in the urban areas, that's where the  
11          conflicts arise. And so there's a natural  
12          tendency to say do not locate the power plants in  
13          those urban areas, where you have those land use  
14          conflicts.

15                  But if you move them elsewhere, there's  
16          other conflicts. There's agricultural conflicts,  
17          and there is thus a need for new transmission  
18          capabilities. There is a loss of efficiency in  
19          having to transport the electrons over a longer  
20          distance. You lose the benefit from having an  
21          infrastructure that may already be in the urban  
22          areas.

23                  So those were the -- that is where the  
24          conflicts arise. And hopefully we'll get into  
25          some of that today. And I think the paper that

1           was prepared touched on -- on those.

2                     Thank you.

3                     Eileen, did you want to get into the  
4           presentations at this point?

5                     MS. ALLEN: I was hoping that each  
6           person around these tables could introduce  
7           themselves briefly, first.

8                     PRESIDING MEMBER LAURIE: Okay.

9                     MS. HUNTER: Good morning. I'm Yvonne  
10          Hunter. I'm a -- good morning. My name is Yvonne  
11          Hunter. I'm a Legislative Representative with the  
12          League of California Cities.

13                    PRESIDING MEMBER LAURIE: Ms. Hunter and  
14          I have had an opportunity to meet each other the  
15          last couple of days. Good morning, good to see  
16          you again.

17                    MS. HUNTER: Good morning.

18                    MS. ALLEN: Pat --

19                    MR. ANGEL: Let me introduce myself  
20          again. Pat Angel, Staff of the CEC, land use  
21          staff.

22                    MR. FUZ: My name is Greg Fuz, and I'm  
23          the Public Services Director for the City of Morro  
24          Bay.

25                    MR. LAST: My name is Tom Last. I'm the

1 Planning Division Chief with Sutter County.

2 MS. CHAMBERLAIN: Roseanne Chamberlain,  
3 Executive Officer, El Dorado LAFCO, and former  
4 Chairman of the California Association of LAFCOs.

5 PRESIDING MEMBER LAURIE: We have met  
6 somewhere along the way. Good to see you,  
7 Roseanne.

8 MR. MASON: My name is Pete Mason, I'm  
9 with the Calpine/Bechtel Joint Development based  
10 in Pleasanton, California.

11 PRESIDING MEMBER LAURIE: Good morning,  
12 Pete.

13 MS. ALLEN: We'd like to have an  
14 informal discussion, starting off by the  
15 perspective that each panel member has. Roseanne,  
16 you're listed first on the agenda. Can you give  
17 us a brief overview from the LAFCO perspective?

18 MS. CHAMBERLAIN: Sure. I have a Power  
19 Point presentation, and my intention here is to  
20 hopefully be fairly brief. I'd like to thank  
21 everyone in advance who is here, who already  
22 understand some of the points I make about LAFCO,  
23 but I'm going to give a brief overview of LAFCO.

24 The next slide, Pete, please. Next  
25 slide.

1                   Okay. My objective is to talk a little  
2                   bit about LAFCO; to take a look at boundaries and  
3                   service extensions; to quickly look at LAFCO and  
4                   CEQA, because I think there may be an interface  
5                   here relative to siting new power plants; to talk  
6                   briefly about new LAFCO laws; and then identify  
7                   hopefully some ideas and opportunities for people  
8                   to think about.

9                   Next slide.

10                  LAFCO is a boundary regulatory  
11                  commission. It is probably the most misunderstood  
12                  government agency in the state. That may be an  
13                  exaggeration. LAFCO is a kind of hybrid agency.  
14                  Its history essentially is a legislative  
15                  compromise. In the late fifties and early  
16                  sixties, about half the legislature wanted to form  
17                  a state regulatory boundary commission type  
18                  agency, something like the CEC, with powers to  
19                  overrule local decision making. And the other  
20                  half wanted no change and total control for the  
21                  local governments.

22                  And the compromise that was reached was  
23                  LAFCO. It's an agency that tries to balance both  
24                  state mandates and local policies. It's  
25                  potentially a fairly schizophrenic organization,

1       because you have the state purposes that are  
2       spelled out in the statutes, being administered by  
3       local officials who don't always have objective  
4       perspectives about those state policies.

5               The principal role of LAFCO revolves  
6       around its indirect land use authority, and it has  
7       substantial planning powers that it administers  
8       through spheres of influence. These broad state  
9       purposes have LAFCO regulating many kinds of  
10      service provider agencies. The broad powers of  
11      LAFCO allow it to administer those state purposes,  
12      and other the years, and in the different areas of  
13      the state, LAFCOs have adopted local policies or  
14      local perspectives about how to undertake those  
15      state purposes and administer them, relative to  
16      their unique local circumstances.

17             I think that may contribute at times to  
18      some of the misunderstandings about LAFCO, but  
19      there are some commonalities throughout the state  
20      relative to LAFCOs, and they've recently been  
21      better articulated by the legislature in the new  
22      laws that I'll talk about later.

23             Next slide, please.

24             LAFCO is a small piece in the land use  
25      puzzle. It -- it could potentially have a

1       significant role in certain circumstances,  
2       particularly in more rural areas, relative to  
3       siting power plants. It has a potentially  
4       important role to ensure that needed services to  
5       support power plant development get in place and  
6       available, in terms of infrastructure. Those  
7       things are identified in the Staff paper,  
8       particularly water and wastewater services, fire  
9       protection, and emergency response services come  
10      to mind.

11               The boundaries of an agency define where  
12      it may exercise its corporate powers, its police  
13      powers, if it has them, and its taxation powers.  
14      It may be possible for agencies to exercise other  
15      powers, proprietary powers outside of its  
16      boundary, but recently this is now also subject to  
17      LAFCO review. The overarching intent is that  
18      these boundary changes and service extensions, for  
19      whatever purpose, be orderly and logical.

20               LAFCO's job is to move the boundaries of  
21      the appropriate agencies to allow those agencies  
22      to exercise their powers and provide services  
23      where they are needed for new power plants.

24               Next slide, please.

25               LAFCO is generally a responsible agency,

1       and the point here is that early consultation and  
2       scoping identifying very early in the process  
3       where LAFCO may be involved in power plant siting,  
4       is very important. In my personal experience,  
5       I've seen many cases where LAFCOs were overlooked  
6       because people were not aware of them, or -- or  
7       aware of the need for later discretionary action  
8       by a LAFCO.

9               PRESIDING MEMBER LAURIE: And when you  
10       use the term "responsible agency", that's how that  
11       term is defined under CEQA?

12              MS. CHAMBERLAIN: Under CEQA.

13              PRESIDING MEMBER LAURIE: Thank you.

14              MS. CHAMBERLAIN: Correct. And one of  
15       the most frustrating experiences that I've had in  
16       my work is to find that a CEQA document prepared  
17       by one agency is not usable by LAFCO at a later  
18       time, because the annexation that would be  
19       required was not even named in the project  
20       description. Very daunting problem that would  
21       cost a lot of additional time if an annexation was  
22       needed.

23              Next slide, please.

24              AB 2838, which was a 195 page bill that  
25       dramatically altered LAFCO's operations and



1 procedures, as well as giving it additional  
2 authorities, went into effect January 1st. I -- I  
3 think we should particularly focus here on new  
4 state policy directions relative to LAFCO, and new  
5 authorities that LAFCO will have. OPR is  
6 currently providing -- preparing service review  
7 guidelines. I expect that those will be out  
8 sometime around the middle of this year, and there  
9 may be an opportunity for the Energy Commission or  
10 other power related agencies to look at those and  
11 ensure that they don't do anything untoward  
12 relative to getting services extended in -- in the  
13 OPR guidelines.

14 The next slide, please.

15 LAFCO's review powers and authorities  
16 were expanded under the new law. LAFCO is now  
17 mandated to look at water supply. That's a  
18 particularly critical issue, relative to certain  
19 power plants. The state law now allows special  
20 status for certain kinds of agency comments,  
21 particularly school districts and joint  
22 city/county agreements. And I think it might be  
23 appropriate to take a look, at some later date, at  
24 special status comments, because it may be  
25 appropriate that comments from the California

1 Energy Commission should have special status when  
2 a project comes to LAFCO that might affect siting  
3 on power plants.

4 LAFCO's also --

5 PRESIDING MEMBER LAURIE: How -- how  
6 would the Energy Commission know. If you have an  
7 EIR going through OPR, that would not ordinarily  
8 -- matter of fact, the Energy Commission wouldn't  
9 -- wouldn't want that.

10 MS. CHAMBERLAIN: No. These are not  
11 special status relative to CEQA comments. But  
12 when -- when LAFCO processes, for example, a city  
13 annexation or a district annexation, elaborate and  
14 very good quality notice has to be given by LAFCO.  
15 And in a situation like that, if it had relevance  
16 to power plant siting, or extensions of services  
17 that could affect getting the power plant sited in  
18 a timely manner, there might be an appropriate  
19 venue there for comments from state agencies.

20 Currently, we are not required to give  
21 notice, and it would be a discretionary action to  
22 give notice, but it may be appropriate for  
23 something to go into laws that are currently being  
24 considered in the legislative session, to ensure  
25 that the Energy Commission had an opportunity, and

1       any comments that were given to LAFCOs in their  
2       deliberations would have some kind of special  
3       status, as we are now currently mandated to give  
4       special status to school district, for example,  
5       school district comments relative to LAFCO  
6       projects.

7               Government Code Section 56434 discusses  
8       service reviews, and I think those are really  
9       important. There is a new area that provides for  
10      LAFCOs to cooperate across county boundary lines,  
11      and interact together in a better way. This is a  
12      place where, hopefully, where -- where energy  
13      related infrastructure decisions were being made  
14      that could affect two different jurisdictions,  
15      that the two LAFCOs involved could hold hands over  
16      them and come up with some kind of a cooperative  
17      effort to ensure that it was done in a timely  
18      manner.

19             I mentioned a moment ago the OPR  
20      guidelines. OPR has -- is in the process right  
21      now of letting the contractor prepare those  
22      guidelines, and I'd be happy to -- to, at a later  
23      date, you know, supply an update to the Energy  
24      Commission if there was a place that they might  
25      want to plug something in there, to make the

1 process a little bit better.

2 One point that I would like to discuss,  
3 this is somewhat esoteric. LAFCO has always  
4 reviewed extensions of service by agencies outside  
5 of their boundaries under special terms and  
6 conditions. The role of LAFCO to do that has been  
7 expanded at this point. And I also think that --  
8 that it might be worth taking a look at the  
9 contract authorization by agencies outside of  
10 their boundary, with a perspective to tie that in,  
11 if -- if it's relevant, to siting for power  
12 plants.

13 When land is out -- land containing  
14 facilities for an agency, let's take the case in  
15 point of district. Facilities that produce power,  
16 or could potentially produce power that are  
17 outside of the boundaries and may be at a very  
18 remote location, for example, are subject to  
19 property taxes unless those lands are inside the  
20 district. That's a situation where a LAFCO could  
21 make some special arrangement that would not  
22 necessarily detract from the enhancement of those  
23 power plants.

24 Next slide, please.

25 PRESIDING MEMBER LAURIE: What's the

1 message you're sending in putting up a picture of  
2 a man-eating canine on this slide? Is that  
3 intended to --

4 MS. CHAMBERLAIN: I'm glad the question  
5 came up.

6 (Laughter.)

7 MS. CHAMBERLAIN: It's not that I love  
8 dogs. I do. LAFCO is the legislature's watchdog.

9 PRESIDING MEMBER LAURIE: I see. Okay.  
10 Thank you.

11 COMMISSIONER PERNELL: That's the vision  
12 I had. Of the picture, anyway.

13 (Laughter.)

14 MS. CHAMBERLAIN: Well, even when people  
15 don't ask the question, they do kind of get the  
16 message from the German shepherd.

17 I think the important concept here --

18 COMMISSIONER PERNELL: If that was a  
19 Rottweiler it'd be a different picture, right?

20 (Laughter.)

21 MS. CHAMBERLAIN: Sure. It is not a  
22 Rottweiler. It's not a Dachshund, either.

23 One important thought that I'd like to  
24 convey really, at this point, is that LAFCO is not  
25 technically a local agency. It has one foot in

1 the door of being a state agency, and one foot in  
2 the door of being a local agency.

3 PRESIDING MEMBER LAURIE: How are you  
4 budgeted?

5 MS. CHAMBERLAIN: That has recently  
6 changed. Within the -- starting the first of the  
7 next fiscal year, cities, counties and special  
8 districts will all contribute to LAFCO funding.  
9 And there is some discussion about the possibility  
10 of the state helping the local governments.

11 PRESIDING MEMBER LAURIE: As opposed to  
12 straight county budgeting.

13 MS. CHAMBERLAIN: Absolutely. That was  
14 changed with AB 2838, the new law.

15 The last slide here, ideas and  
16 opportunities. There's lots of different  
17 directions that people could go in. I should  
18 explain the graphics at the beginning.

19 I think what I would hope is that LAFCO  
20 should be included early in the process. It's  
21 often overlooked. It should be linked into any  
22 CEQA process that's going on, relative to the  
23 siting of new power plants. I think there are  
24 opportunities that the Energy Commission should  
25 not overlook, relative to work that OPR will be

1       commencing immediately, work relative to the  
2       service review guidelines. And I think there will  
3       be opportunities with new legislation to enhance  
4       the state policy direction that's being given to  
5       LAFCO.

6               The state, with AB 2838, clearly wants  
7       LAFCO to have a higher profile role, and, indeed,  
8       there will be an overlap with expanding services  
9       that support putting new power plants online.

10              AB 2838 really intends that LAFCOs do a  
11       better job, and some of the restructuring of LAFCO  
12       is intended to foster a very broad, or more  
13       regional perspective. LAFCO is not a perfect  
14       arrangement. From the beginning, it was a kind of  
15       hybrid. The local officials are -- are charged  
16       with a mandate to do a higher state purpose, and  
17       that can be very difficult to do. There are often  
18       conflicts and problems at -- that are played out  
19       at LAFCO, that are troublesome.

20              I would hope that the state, if it would  
21       like LAFCO to -- to accomplish the higher purpose,  
22       or the better purpose, to define what LAFCOs might  
23       be able to do, and I think there may be  
24       opportunities in legislation currently pending  
25       that would help plug LAFCO in just a little bit

1 better, with some clear policy direction from the  
2 state, as the state recently did for water  
3 analysis and fiscal aspects of service extensions.

4 There are currently a number of bills  
5 pending, in -- in the rush to fix problems with  
6 electricity supply in the state. Two of them that  
7 I am familiar with would alter the LAFCO process  
8 relative to municipal utility districts and public  
9 utility districts. I'm not sure yet what we will  
10 see on the amendments, and so forth, but there is  
11 an intent there to streamline and improve the  
12 LAFCO process.

13 I hope the legislature would be aware of  
14 the fact that LAFCO has a much broader job to do  
15 with other agencies, and would not harm LAFCO's  
16 ability to balance the local issues and the local  
17 interests. I'm hopeful that we will keep the baby  
18 from being thrown out with the bath water on a  
19 couple of these bills.

20 I'd be happy to answer any questions  
21 now. I'm hoping to be able to stay through the  
22 afternoon session this afternoon, and I hope  
23 you've found my comments useful.

24 PRESIDING MEMBER LAURIE: Well, then we  
25 -- we will briefly mention the state role in land



1 use planning, and I'm not sure the state is as  
2 impotent in the process as some might think.  
3 There are state biological rules, air rules, water  
4 rules, all kinds of state standards that local  
5 developments must meet.

6 Perhaps the strongest tie to state input  
7 on local land use planning is the issue of -- of  
8 housing elements to local general plans. My  
9 understanding is that Governor Davis has issued a  
10 decree ordering OPR to either start enforcing  
11 those, or taking a closer look at it, because they  
12 really never have been enforced in such a manner  
13 as to promote any kind of state -- overall state  
14 policy. I remember when Governor Wilson first  
15 came to office, he had views about regional  
16 planning concepts which quickly got thumped by the  
17 recession that hit us in the early nineties.

18 When the LAFCOs get together at  
19 meetings, do you folks at all talk about any  
20 expanded planning, regional planning role that  
21 might fit in to a LAFCO, as opposed to any other  
22 entity that might exist?

23 MS. CHAMBERLAIN: I'm going to try to  
24 answer this question briefly, but it's one of my  
25 favorite topics.

1                   Over the last ten -- eight to ten  
2       legislative sessions, there have been at least  
3       four bills that have been introduced and have  
4       worked to varying degrees of success through the  
5       legislature, that would provide for more quasi  
6       regional governance-like activities. Those has  
7       principally resulted -- none of them have been  
8       successful, but those have principally resulted in  
9       some of the components of AB 2838, which did go  
10      through the legislature, with a policy mandate to  
11      LAFCO to look more regionally at problems, and to  
12      look for intergovernment cooperation.

13                  The comprehensive service reviews, for  
14      example, will tie spheres of influence. I'm  
15      probably speaking jargon for 80 percent of the  
16      folks here. But LAFCO's role in planning now has  
17      to integrate the service extensions of multiple  
18      agencies before boundary changes or spheres of  
19      influence actions can be taken by the Commission.  
20      I see that as a modest but direct policy mandate  
21      from the state that LAFCOs are supposed to do  
22      something more on this subject. The difficulty  
23      is, is that the -- that the more substantive  
24      language tends to have been amended out of the  
25      bill.

1                   In the context of electricity supply, I  
2           think the state might be willing to give LAFCO a  
3           little clearer direction here, particularly in  
4           light of the changes that were chaptered into law  
5           relative to AB 2838, the inter-LAFCO cooperation,  
6           the inter-agency cooperation.

7                   Again, there's no -- there's no absolute  
8           requirement from the state, there's no absolute  
9           direction to LAFCOs what precise steps they are to  
10          take under certain circumstances, and there may be  
11          an opportunity to do that, to -- to plug in the  
12          LAFCO review process, streamline it, tighten it  
13          up.

14                   My concern with bypassing the LAFCO  
15          process is that that review that happens at LAFCO  
16          has other beneficial purposes.

17                   PRESIDING MEMBER LAURIE: Thank you,  
18          Roseanne, very much.

19                   You may want to make a note to ask  
20          Yvonne about Assembly Bill 9x.

21                   Commissioner Pernell.

22                   COMMISSIONER PERNELL: Yes. I -- I  
23          thought I know -- knew a little bit about LAFCO,  
24          but found out I don't know as -- half as much as I  
25          thought I did.

1                   Let me ask you a couple of questions.

2                   The first is, you mentioned AB 2838. Was that --  
3                   is that chaptered -- was that chaptered last year,  
4                   or --

5                   MS. CHAMBERLAIN: Yes. No, it -- yes,  
6                   and effective the first of January this year.

7                   COMMISSIONER PERNELL: And who has  
8                   authority in writing the regulations, or -- or  
9                   broadening your authority?

10                  MS. CHAMBERLAIN: Well, the --

11                  COMMISSIONER PERNELL: Is that OPR, is  
12                  that --

13                  MS. CHAMBERLAIN: No, the bill itself --

14                  COMMISSIONER PERNELL: -- the commission  
15                  of LAFCO?

16                  MS. CHAMBERLAIN: -- the bill itself  
17                  calls out a number of areas where LAFCO's  
18                  responsibilities and authorities were expanded.  
19                  There are a number of analysis factors that LAFCO  
20                  historically could consider on an optional basis,  
21                  that are now mandated by state law must be  
22                  evaluated for every project that's reviewed at  
23                  LAFCO, as an example of the expanded authority.

24                  OPR is currently drafting guidelines  
25                  related to service reviews. They are also

1 directed to prepare guidelines for incorporations  
2 and a number of other things that are not  
3 essentially relevant to the electricity situation.

4 COMMISSIONER PERNELL: Okay. And it  
5 sounds like, from your presentation, that LAFCO is  
6 a -- you have a number of organizations throughout  
7 the state, LAFCO organizations. Is that a  
8 regional or a county --

9 MS. CHAMBERLAIN: LAFCOs have --

10 COMMISSIONER PERNELL: -- wide  
11 organization?

12 MS. CHAMBERLAIN: Each county has a  
13 LAFCO. The jurisdiction --

14 COMMISSIONER PERNELL: So it's county-  
15 wide.

16 MS. CHAMBERLAIN: -- the jurisdiction of  
17 LAFCO is county-wide, correct. And the new law,  
18 2838, provides that there -- provides a vehicle  
19 for inter-LAFCO cooperation related to issues that  
20 cross the county lines, a more regional view.

21 COMMISSIONER PERNELL: All right. Okay.

22 My other question is how you -- just  
23 give me an example of how LAFCO would interact, in  
24 terms of our siting process, how LAFCO would  
25 interact with a regional water district, for

1       example, in terms of resources. We have -- we  
2       interact a lot with water agencies. I don't  
3       recall, maybe Commissioner does, we -- interacting  
4       with LAFCO in any way in this process.

5               MS. CHAMBERLAIN: Well, clearly, many  
6       kinds of power plants need an adequate water  
7       supply in order to function effectively. They  
8       need infrastructure to get the water there, they  
9       need to process the wastewater, and those are  
10      services that are commonly provided by water  
11      service agencies. They come in lots of different  
12      kinds of names.

13             If the power plant were outside the  
14      boundary of a water supply agency and it needed  
15      water, it would likely have to annex into the  
16      boundaries of that agency in order to be served  
17      the water it needed to produce electricity.

18             COMMISSIONER PERNELL: So if it was --  
19      okay. But LAFCO -- each county has a LAFCO, so if  
20      it's outside the boundary of Sacramento, then it  
21      would be inside the boundary of something else, or  
22      another county.

23             I'm just trying to understand, and I  
24      don't want to put you on the spot here. I'm just  
25      trying to understand the relationship --

1 MS. CHAMBERLAIN: Okay. Right. Some --  
2 for example, if the location for a power plant was  
3 inside the boundaries of a city, and the city  
4 happened to provide water, sewer, fire, and a  
5 whole host of services, that would not come to  
6 LAFCO. And, indeed, not every power plant would  
7 need to come to LAFCO. As the state looks at  
8 areas that are outside of existing urban areas,  
9 the likelihood of LAFCO being involved in the  
10 process increases.

11 So, for example, if a power plant were  
12 to be sited in the -- let's make a hypothetical  
13 here, El Dorado Hills, that --

14 PRESIDING MEMBER LAURIE: Perfect.

15 (Laughter.)

16 MS. CHAMBERLAIN: I hope no one takes  
17 this seriously here.

18 PRESIDING MEMBER LAURIE: Not in my back  
19 yard, it ain't going to be.

20 (Laughter.)

21 COMMISSIONER PERNELL: Good analogy  
22 there.

23 MS. CHAMBERLAIN: The land that the  
24 power plant sits on would need to have services  
25 available to it. Those services in El Dorado

1 Hills would probably be provided by El Dorado  
2 Irrigation District, the water and wastewater  
3 provider for the area. If the land was outside  
4 the boundaries of EID, they could not receive  
5 those services, and LAFCO would have to review the  
6 annexation; that is, modify the boundary of El  
7 Dorado Irrigation District to take that territory  
8 in, in order for service to be provided.

9 COMMISSIONER PERNELL: As long as it's  
10 within, well, El Dorado County.

11 MS. CHAMBERLAIN: If it were -- if a  
12 like situation occurred in San Joaquin County, the  
13 San Joaquin LAFCO would have jurisdiction to do  
14 exactly the same thing.

15 COMMISSIONER PERNELL: Right. Right.  
16 Okay. And what is your -- so, let me just ask the  
17 question. Have LAFCO intervened in any of our  
18 siting cases?

19 MS. CHAMBERLAIN: Yes. There have been  
20 siting situations where annexations were  
21 problematic, and I think your Staff can supply you  
22 with the information there much better than I can.  
23 I know of them only peripherally.

24 COMMISSIONER PERNELL: Have -- have your  
25 agency ever -- I'm assuming -- you're from El



1 Dorado, so has El Dorado County ever --

2 MS. CHAMBERLAIN: No. El Dorado LAFCO  
3 has not. That may happen soon, though.

4 PRESIDING MEMBER LAURIE: Has not what?

5 MS. CHAMBERLAIN: El Dorado LAFCO has  
6 not participated in annexation decisions relating  
7 to siting new power plants.

8 COMMISSIONER PERNELL: Okay. Final  
9 question. If you were to participate, you would  
10 be an intervenor, and do you see any LAFCOs -- any  
11 LAFCOs, whether it's El Dorado or any other, as  
12 intervenors in issues other than for water or  
13 natural gas type issues?

14 In other words, my understanding of  
15 LAFCO, which, again, is -- is minimal, is that it  
16 deals with the -- the annexation, creates cities,  
17 work out a formula for taxes for those, sphere of  
18 influence type issues. So when it comes to issues  
19 of public safety, or water, or air quality, are  
20 you involved in any of those?

21 MS. CHAMBERLAIN: Indirectly, in the  
22 CEQA process, yes. But principally, LAFCO's job  
23 is to modify boundaries to ensure that appropriate  
24 services get extended to territory where those  
25 services are needed.

1 COMMISSIONER PERNELL: Okay. Thank you.

2 MS. CHAMBERLAIN: Did I answer your  
3 question?

4 COMMISSIONER PERNELL: Yes, you did.

5 PRESIDING MEMBER LAURIE: Thank you,  
6 Robert.

7 For purposes of the record, let me  
8 clarify my earlier statement. I would welcome a  
9 power plant in my back yard --

10 (Laughter.)

11 PRESIDING MEMBER LAURIE: -- if it  
12 served a greater community need.

13 COMMISSIONER PERNELL: And that Bee  
14 reporter is right back in the room.

15 (Laughter.)

16 PRESIDING MEMBER LAURIE: And thank you  
17 very much, Ms. Chamberlain.

18 Okay. Who would like to go next?

19 This is Yvonne Hunter, League of  
20 California Cities. Ms. Hunter, good morning.

21 MS. HUNTER: Good morning. Thank you  
22 for inviting me and giving me the opportunity to  
23 provide a perspective of cities.

24 The League of California Cities  
25 represents all 470 -- and I think it's five, but

1 we may have gotten one more -- 476 incorporated  
2 communities in the state.

3 I'm going to make some statements that  
4 may appear a bit stronger than you would expect,  
5 but I'm doing it to emphasize the importance that  
6 local governments place on our land use authority  
7 and on local control, so please put that in -- in  
8 perspective.

9 Before I comment on some of the  
10 questions, the issues that were posed in the  
11 background paper, which I think is -- these are  
12 legitimate questions, and they're issues that we  
13 all have to grapple with. But let me start out by  
14 laying out a few basic principles.

15 Local control, local land use authority  
16 for cities and counties is sacred. It's an issue  
17 that we generally will fall on our sword for.  
18 Commissioner Laurie heard me talk about that in a  
19 very good discussion on AB 9x, which the League  
20 had previously opposed, and with all the  
21 amendments we -- we went neutral. And the issue  
22 in that bill is it would have given counties the  
23 ability to designate sites for power plants within  
24 city limits. And that's simply a no-no.

25 So local governments cherish our land

1 use authority. It's a sacred issue to us that we  
2 don't think should be compromised.

3 PRESIDING MEMBER LAURIE: What -- what  
4 exceptions are there to local control over land  
5 use, other than government buildings, including  
6 school buildings? Are -- are there any others?

7 MS. HUNTER: Well, you -- you correctly  
8 commented that -- that indirectly, I think the  
9 state, through -- through different laws, whether  
10 it's housing, transportation, air quality, that  
11 certainly indirectly affects land use. But I'm  
12 talking about out and out preemption, or allowing  
13 another body to amend a general plan, or say in  
14 spite of the fact that it's zoned residential,  
15 you're going to put something else here now.

16 But the Energy Commission already has  
17 the authority to override local actions. It has  
18 to go through, I think, an appropriate due  
19 process. It has to attempt to work at the local  
20 level to try to resolve some of the differences.  
21 And it's my understanding that they only -- that  
22 the Commission has only overridden a local  
23 decision once before, and that was in the Geysers,  
24 and we'll find out whether that happens again with  
25 another project that I'd prefer not to get into.

1                   PRESIDING MEMBER LAURIE: Which is  
2           deeply appreciated.

3                   MS. HUNTER: Yes. So it's -- it's a  
4           balancing act that locals or the state goes  
5           through, but -- but we recognize that, the sacred  
6           nature of -- of local control.

7                   And a lot of the discussion in the  
8           legislature, in the press, and frankly, a few  
9           things that I've seen from the Commission that  
10          I'll talk on in a few minutes, I would hope that  
11          we're not going to blame local governments for the  
12          failure to have sufficient generating capacity.  
13          It's easy to make us the scapegoat, and the  
14          NIMBYs, and all that, that's not accurate, and I  
15          don't think it's productive.

16                  I was delighted about a month or so ago,  
17          on a Sunday, or whenever it was, to find a  
18          Sacramento Bee article, this is January 28th, "All  
19          kinds have foiled plants." And it's a discussion  
20          of research done by -- by the Bee, looking at 21  
21          power plants. Let me read you a few select lines,  
22          or paragraphs from the article.

23                  COMMISSIONER PERNELL: Is that from a  
24          paper?

25                  MS. HUNTER: Pardon me?

1 COMMISSIONER PERNELL: What are you  
2 reading from?

3 MS. HUNTER: Sacramento Bee.

4 COMMISSIONER PERNELL: Sacramento Bee.

5 MS. HUNTER: Right. January 28th.

6 COMMISSIONER PERNELL: Okay.

7 MS. HUNTER: I can leave this with you,  
8 if you want. It's not a very good xerox.

9 It starts off, but based on a review of  
10 21 power plants proposed or under construction in  
11 California, the reality is more complex. From  
12 Bakersfield to the Bay Area, neighborhood  
13 activists have slowed some plants, but so have  
14 labor unions, corporate neighbors, and others with  
15 far greater resources at their disposal. In fact,  
16 some of the power generators complaining loudest  
17 about California's environmental obstacle course  
18 have used the system to hold up licensing of a  
19 competitor. Of the 21 power plants proposed for  
20 licensing since 1997, competing companies have  
21 intervened in 12 proposals, slowing the process in  
22 at least four situations, according to a review by  
23 the Bee.

24 Quote, power producers have -- have an  
25 interest in all of these cases, said Bob

1       Therkelsen, Deputy Director of the Commission.

2       Quote, they are dealing with constrained  
3       resources, such as natural gas and transmission  
4       lines.

5               And they give a number of -- of other  
6       interesting tidbits that in the interest of time I  
7       won't go into.

8               So just as I think the legislature and  
9       everyone has agreed that -- that we don't want to  
10      point fingers on why we're in this energy mess, I  
11      don't think we ought to blame local government  
12      land use authority as the reason for we don't have  
13      enough siting plant, and then decide to run  
14      roughshod over them.

15              PRESIDING MEMBER LAURIE:  No, it's go to  
16      be local government's fault, because nobody else  
17      has admitted it to being theirs.

18              MS. HUNTER:  But we're not admitting it,  
19      either.

20              (Laughter.)

21              MS. HUNTER:  Interesting, when I give  
22      talks to city officials and they want to know what  
23      happened with demand for energy and how come --  
24      what's going on, I ask them, okay, how many of you  
25      have a home computer?  And everybody raises their

1 hand. And how many of you turned your computer  
2 off at night? And they kind of shrink. How many  
3 of you have DSL lines on your computers? So,  
4 collectively, all of us are -- are part of the  
5 equation.

6 Okay. Let me get to some of the issues  
7 that were raised, and suggest some comments.

8 First issue. What land use issues  
9 potentially constrained energy development in  
10 California. I've been asked this by reporters and  
11 others, and it's important to remember that  
12 historically, it's not been the role of local  
13 government to plan for energy facilities. That's  
14 generally been the Energy Commission's role. I  
15 actually read the codes. When in doubt, read the  
16 codes, the Warren-Alquist Act, to find out what --  
17 how the process works. And there was extensive  
18 and very good, thoughtful requirements for the  
19 Commission in evaluating demand, looking at  
20 possible sites. So -- and what actions does the  
21 Energy Commission need to take to address land use  
22 conflicts. I don't know that you need to take  
23 anymore action, or have anymore authority than you  
24 already do.

25 I think it's important that the



1 Commission educate potential project proponents  
2 about needing to be involved with LAFCO, about the  
3 importance of general plans, zoning, local levels.  
4 Those -- those are very, very important roles and  
5 things that the Commission needs to play.

6 There was a question about energy  
7 elements to facilitate energy siting. Frankly, I  
8 don't think that's the way to go. There are a  
9 number of communities that have energy elements in  
10 their general plan, but it's mostly to promote  
11 conservation.

12 PRESIDING MEMBER LAURIE: And that's  
13 voluntary, not mandatory. Is that right?

14 MS. HUNTER: Exactly. And -- and I  
15 don't think that's the way to go. Frankly, well,  
16 I don't handle the land use part --  
17 responsibilities for the League, so I -- I know  
18 just enough to be a little bit dangerous. But I  
19 had a lengthy consultation yesterday with our  
20 lobbyist that does handle this area, and he worked  
21 on -- on the LAFCO bill extensively. And I talked  
22 with him at length about the Richman bill, as  
23 well.

24 We would suggest that the general plan  
25 already includes provisions for energy siting.

1       And that is, you look at what areas in the city  
2       are appropriately zoned, what areas are zoned  
3       industrial that -- that could handle those types  
4       of plants.

5               COMMISSIONER PERNELL:   And we would  
6       agree, but keep in mind, we're not the ones to  
7       dictate where these plants are.   It is the plant  
8       owner, and they have a different set of criteria  
9       as to where they want to place these facilities.  
10      So -- and, you know, it -- I don't -- I think that  
11      they might look at, and certainly they do, but  
12      depending upon how much weight they give to zoning  
13      versus where the interconnection tie is, and other  
14      issues.   So, you know, what -- what I think we're  
15      trying to do here, and I don't want to cut you off  
16      because I know you've got a very extensive  
17      presentation --

18             MS. HUNTER:   It's not that extensive.

19             COMMISSIONER PERNELL:   -- but what we're  
20      trying to do is just simply start a dialogue to  
21      get some suggestions.   So we're not saying, I  
22      mean, sure, the Warren-Alquist Act gives us the  
23      authority to license plants.   It's not a problem.  
24      We know that, we've been doing that.   But to hear  
25      suggestions from LAFCO and from the League of

1       Cities, and from others around the table, as to  
2       what -- how you think the process is working, how  
3       you think we can improve it, how we can be better  
4       neighbors and do some collaboration, so that the  
5       -- you know, you -- we won't have adverse affect  
6       anything you're doing.

7               I mean, what I'm hearing is you can do  
8       all this, but do not try and take any of the  
9       cities' jurisdiction away, because then I'm coming  
10      after you. And you didn't say that, but -- and I  
11      understand that. You represent them, you're a  
12      very good advocate, and we've worked together, you  
13      know, in past lives, so I know.

14             MS. HUNTER: Your past life.

15             COMMISSIONER PERNELL: So I know. But I  
16      just don't want to give the wrong impression that  
17      we are trying to somehow not hold up to our  
18      responsibility per the Warren-Alquist Act, and  
19      certainly it is not the cities' fault, or anybody  
20      else's, or some people's fault. But collectively,  
21      we're not to blame for the Energy Commission -- I  
22      mean, for the energy crisis or situation here.  
23      You're not, we're not.

24             What we're trying to do is work  
25      collaboratively to get out of this situation. And

1       we want to do it in a way in which we bring people  
2       to the table to tell us their suggestions, even  
3       though we're mandated by statute, but there are  
4       certain flexibilities and ways in which we could  
5       do it to ease the discomfort. And I think that's  
6       why we're here. So I just wanted to make that  
7       statement.

8               MS. HUNTER: And I -- I certainly  
9       appreciate what you say, and actually the next  
10      part of my presentation is going to talk a little  
11      bit about some suggestions on how we can work  
12      collaboratively together.

13             I think it's important, as I said, to --  
14      to -- for someone, I don't know who, it may be the  
15      role of the Energy Commission, and -- and in any  
16      of this, whether it's education or workshops, we  
17      are happy to help the Commission to make sure that  
18      -- that potential facility proponents, developers,  
19      understand the landscape in California. The  
20      siting landscape, whether it's the environmental  
21      rules, whether it's understanding LAFCO, whether  
22      it's understanding zoning and land use, and how  
23      they can work with the local jurisdictions to make  
24      a project work.

25             The -- the worst thing that would

1       happen, and I'm not saying it has, but the worst  
2       thing that would happen would be for a developer  
3       to come in and -- and this is -- energy just  
4       happens to be the -- the issue that -- the crisis  
5       issue that we're all facing. But it's -- we need  
6       to talk about it for landfills or housing  
7       developments, or a manufacturing plant. Don't  
8       expect to put it here, and with no -- no  
9       resistance by the local agency, have it rezoned.  
10      No problem. Sure, we'll just throw our general  
11      plan zoning out of the way.

12                They need to understand how local  
13      government works, just as they need to understand  
14      how the air districts and regional boards -- and  
15      we are more than happy to work with the Commission  
16      in providing some of that information.

17                PRESIDING MEMBER LAURIE: Let me comment  
18      as -- as to that point.

19                California's land use process is unique  
20      among states. Our environmental analysis is  
21      probably the most extensive. Our public  
22      participation mandates are extensive. In my  
23      previous life as a land use attorney, it'd be an  
24      issue that I'd have to deal with from any out of  
25      state developer, and that wasn't even with power

1       plants. Anybody who comes in from anywhere  
2       outside the boundaries of this state has had a  
3       hard time fathoming what in the world we do here.

4               But it's a process that we in  
5       California, frankly, have grown accustomed to, and  
6       there's nobody in the State of California that is  
7       speaking about changing those issues that we are  
8       most concerned about. That is, maintaining a  
9       strong environmental review and ensuring public  
10      participation.

11             One challenge we've had in power plants  
12      is that most of the developers are new to  
13      development in California. So they've been facing  
14      the same issues that out of state housing  
15      developers face, or out of state industrial  
16      developers face. That is growing accustomed to  
17      the way we do business here, which is, in fact,  
18      different than most places. So it is a question  
19      of education.

20             MS. HUNTER: I think you're right. I  
21      think you're very right.

22             One of the -- the issue questions is  
23      what is the Energy Commission's role. I talked  
24      about that a little bit. I think the dialogue and  
25      the discussion we had on AB 9x is -- is a good

1 step forward. And as I said, I think the locals  
2 are -- are happy to work in conjunction with the  
3 Energy Commission to identify potential sites, to  
4 talk about potential barriers or opportunities,  
5 recognizing that existing law at the very end of  
6 the process allows the Energy Commission to  
7 override a local decision to perhaps not amend the  
8 general plan, or give a variance, but that should  
9 be reserved for very, very extreme examples.

10 There is, as we all know, the 50  
11 megawatt limit, a 50 megawatts -- below 50  
12 megawatts, local agencies have -- are the lead for  
13 siting, and the Energy Commission does not have  
14 the override authority. I find it intriguing that  
15 there are a couple of bills out there, I think one  
16 actually is -- has been introduced. But there are  
17 a number of proposals both from Democrats and  
18 Republicans to increase that threshold to 100  
19 megawatts. We're -- we're delighted. We're  
20 pleased with that. That, to me, is an indication  
21 that we must be doing something right at the local  
22 level.

23 And, but -- but I think, again, that's  
24 an area where local governments can continue to  
25 work in partnership with the Commission.

1           The second issue is are there sufficient  
2       avenues for -- to the public and local agencies to  
3       provide input to the process. At the local level,  
4       I would say yes. Clearly, there are -- we public  
5       hearing things to death, partially as a result of  
6       statute, and partially because it is the right  
7       thing to do at the local level. And power plants,  
8       regardless of what size, stimulate a lot of  
9       discussion.

10           It's my understanding, based upon very  
11       brief discussions with a number of city folks,  
12       that there's probably sufficient opportunity at  
13       the Energy Commission level for at least local  
14       government input. There was a discussion -- when  
15       was it, Tuesday -- I've lost track of what -- what  
16       happens what day -- on Senator Sher's bill, 28x,  
17       to limit the amount of time that local governments  
18       can comment on facilities. We need to do some  
19       clarification on that, to -- to ensure that  
20       limiting our comment period does not also limit  
21       our ability to be intervenors. And I think a lot  
22       of communities view that as an appropriate role.  
23       And we also need to remember that -- that local  
24       governments many times are -- not many times, they  
25       are reflecting the concerns of their constituency.



1                   I think that the paper, or the questions  
2           ask very keen issue, and what about the  
3           differences between urban and rural agriculture  
4           development. Clearly, those make vastly -- for  
5           vastly different types of situations. The -- the  
6           impacts if a facility is in the middle of ag land  
7           or generally grazing land in the unincorporated  
8           area of a county is going to be vastly different  
9           if it's -- if it goes to -- in the middle of a  
10          very congested city.

11                  Some folks have raised the issue of  
12          environmental justice, and that -- that is -- that  
13          is an appropriate issue. But the impacts are  
14          going to be different, and the impacts are going  
15          to be more complicated and probably the land use  
16          issues are going to be different.

17                  So the next question was how do you  
18          address some of these issues earlier. I touched  
19          on some of them before. I think in general, it  
20          would be a good idea for the Commission  
21          periodically to host forums with potential  
22          developers on explaining the uniqueness of -- of  
23          California's environmental and land use programs.  
24          We would be happy to participate with you in that  
25          to provide the resources from local planners.

1                   I think it's also important for the  
2           Commission to educate local governments. I'm  
3           delighted to say that we have a public works  
4           officers institute going on in Monterey, and I  
5           haven't had a chance to -- which I would have been  
6           at had I not been on this panel. We had a session  
7           yesterday, general luncheon session, that they  
8           wanted added to the program on energy conservation  
9           and energy efficiency opportunities for both city  
10          and counties. It's a joint meeting of public  
11          works and county engineers, so we had a staff  
12          person from the Energy Commission go down. The  
13          Energy Commission was very helpful in securing a  
14          speaker.

15                 We have sessions later in the month at  
16          our planners institute on what's new in energy  
17          facility siting, what's the role of local  
18          government. We have someone -- we secured someone  
19          from the Governor's office who -- who will be  
20          participating in that panel.

21                 We need to do more of those. And  
22          whenever we figure out what happens at the end of  
23          the special session, with not only the Governor's  
24          executive orders but legislation, I think we need  
25          to engage in some discussion on how the League and

1 the Energy Commission can work together to get the  
2 word out to local governments. I've already  
3 suggested that we ought to have some sessions at  
4 our annual conference, which happens to be in  
5 September in Sacramento, on what's new in power  
6 plant siting, or perhaps even some special  
7 workshops.

8 So I think we need to educate the  
9 proponents, the locals. You might even want to  
10 talk about having community forums. I think those  
11 are -- are certainly things we're prepared to do.

12 I need to put this out here. Just  
13 follow up with -- with my strong statement about  
14 local control. So the answer is not total  
15 preemption. I think the answer is working better  
16 cooperatively to -- to try to resolve differences  
17 at the local level.

18 I do need to raise something that came  
19 to my attention two days ago, that if this forum  
20 had been last Friday or last Thursday, I wouldn't  
21 have even raised. But I'm curious about there  
22 were some proposed changes to -- modifications to  
23 the siting regulations, and I -- I gather that the  
24 Commission discussed them yesterday, and I don't  
25 know what the end result of it was.

1                   But Commissioner Laurie, with all due  
2           respect, I have -- it gave me great pause to read  
3           the recommendation, and if -- I gather it was from  
4           you, but if it wasn't, I apologize. But it was a  
5           proposal out there at the very last -- last line,  
6           said, in addition to the above, I would recommend  
7           that Section 25525 of the Warren-Alquist Act be  
8           amended to delete the requirement that a project  
9           must conform to local or regional laws,  
10          ordinances, or standards.

11                   And I'm sort of curious why we need to  
12          do that. You already -- the Commission already  
13          has the ability to -- to override us, and deleting  
14          that provision, which clearly would take statutory  
15          action, not regulatory action, would give local  
16          governments great pause, and great concern.

17                   And so I'm a little bit curious what --  
18          what happened at the -- the hearing yesterday.

19                   PRESIDING MEMBER LAURIE: First, the  
20          responsibility for that is solely mine. Second,  
21          the reason for it was primarily to give pause.

22                   MS. HUNTER: Well, you did.

23                   PRESIDING MEMBER LAURIE: And to  
24          contemplate the entirety of the issue and the  
25          conflicts that are arising from recent

1       circumstances.

2               What happened is that the generic issue  
3       will be further discussed.

4               MS. HUNTER:  Well, we're happy to  
5       participate in the dialogue in any way we can.

6               PRESIDING MEMBER LAURIE:  I just think  
7       contemplation is good.

8               MS. HUNTER:  You certainly got my  
9       attention.

10              PRESIDING MEMBER LAURIE:  Then I'm a  
11      happy man.

12              MS. HUNTER:  I'm not going to -- I've  
13      gone on and on about local control, and I -- I  
14      don't want to over -- over emphasize that, but let  
15      me just suggest that if we're going to do away  
16      with local ordinances and give the Energy  
17      Commission the ability to site power plants, then  
18      why don't we just do away with general plans, and  
19      -- and give the waste board the authority to site  
20      where solid waste facilities are, and we'll give  
21      Food and Ag the authority to decide where ag  
22      processing plants should be.  I mean, it -- it's a  
23      fundamental issue that is the classic slippery  
24      slope -- et cetera.

25              PRESIDING MEMBER LAURIE:  We will have

1        plenty of opportunity to discuss those concepts.

2                    MS. HUNTER: I'm sure we will.

3                    Let me -- let me conclude on a positive  
4        note. The League, as an organization, and cities  
5        throughout the state, are seriously concerned  
6        about the energy crisis, energy emergency,  
7        whatever the appropriate term is. We have  
8        aggressively embraced conservation. We, the board  
9        of directors, endorse the Governor's call for  
10       seven percent energy conservation. We have been  
11       working in partnership with the Commission, with  
12       OES, with the Governor's office, all through  
13       December and January, when we had Stage 3 alerts,  
14       to put information up on our Web site. It started  
15       in a meeting right here in this room when there  
16       was a lot of discussion, how can we get the word  
17       out, the need for load shedding on an emergency  
18       basis from local governments. And that was in  
19       mid-December. And starting two days later, we put  
20       a notice up on our Web site and are using our list  
21       serve capability within 15 minutes of getting  
22       notified by the Commission that we were facing a  
23       critical shortage.

24                    I can't remember how many times now  
25       we've put those notices up there. We've been

1 working with OES and the Commission Staff to  
2 streamline that. We have a meeting next week.  
3 We're happy to put it up on our Web site. We  
4 think there's a better way to get it directly to  
5 local government, so we've been working in that  
6 area. We have -- I don't -- I should've checked  
7 the count, probably by now over 200 cities that  
8 have endorsed the conservation pledge. We have  
9 the list up on our Web site. This is something we  
10 take seriously, and we are working  
11 organizationally and individually with cities  
12 aggressively to do that.

13 And I think it's important to remember  
14 the -- the leadership role that local governments  
15 have taken in promoting conservation. I live in  
16 the City of Davis. I live in a small, moderate  
17 cost house that is very, very energy efficient,  
18 and the state energy building codes were based  
19 upon the City of Davis' codes, adopted long before  
20 Title 24 was done. And there are a lot of cities  
21 throughout the state that have been leaders in  
22 this, and what we want to do is share that  
23 information with cities.

24 We understand the state building codes  
25 are going to be changed, I think they may have

1 already, to make them more energy efficient. We  
2 want to work with the state to get that  
3 information out to city building departments.

4 So I think there's a lot we can do in  
5 partnership that is constructive. And I thank you  
6 all for the opportunity to participate.

7 PRESIDING MEMBER LAURIE: Thank you, Ms.  
8 Hunter, very much.

9 You may want to write down the name of  
10 Mr. Chris Tooker, T-o-o-k-e-r, and ask him to  
11 contact you when we hold public forums on the  
12 modifications of siting regs.

13 Thank you very much.

14 MS. HUNTER: Thank you.

15 PRESIDING MEMBER LAURIE: Commissioner  
16 Pernell.

17 COMMISSIONER PERNELL: Just a couple of  
18 questions -- comment, and then a couple of  
19 questions. And I do appreciate your willingness  
20 to work with us, and -- and have cities involved  
21 in the process.

22 I thought I heard you say that cities  
23 support the -- the legislation that will allow the  
24 Energy Commission jurisdiction to go up to 100  
25 megawatts, rather than 50. Is that -- is that



1       what you said?

2                   MS. HUNTER:   Yes.

3                   COMMISSIONER PERNELL:   Okay.   And --

4                   MS. HUNTER:   Well, no, it's not the --  
5       it's the local government authority to go up to  
6       50.   Yes.

7                   COMMISSIONER PERNELL:   Yeah, which is  
8       what I meant.

9                   MS. HUNTER:   Yes.

10                  COMMISSIONER PERNELL:   And you also were  
11       very forceful in letting Commissioner Laurie know  
12       that you wouldn't feel comfortable about the  
13       Commission suggestion of getting rid of the  
14       cities' jurisdiction over siting power plants.  
15       And I just want to make a point that we would feel  
16       the same way about part of our jurisdiction being  
17       taken away.   So you have to understand that on one  
18       hand, you're supporting taking away something from  
19       us, and on the other hand you don't want us to  
20       take anything away from you.

21                  So I think that we've got to really  
22       think that through a little bit when you come and  
23       say you guys are bad folks for doing this, but  
24       yet, on the other hand, you're supporting doing  
25       the same thing on the other side.

1 MS. HUNTER: Well, you --

2 COMMISSIONER PERNELL: So that was the  
3 comment.

4 MS. HUNTER: -- you raise a fair point.

5 I --

6 COMMISSIONER PERNELL: Okay. Let me --

7 MS. HUNTER: You also, the Energy  
8 Commission also does have the existing authority  
9 still to override local decisions.

10 COMMISSIONER PERNELL: Sure. Sure. But  
11 the point I'm making is the jurisdictional issue  
12 and -- and what -- whether or not you keep it or  
13 take it away, or -- so that's the point, that's  
14 the comment. So it's -- let me ask you, though,  
15 in terms of the League's representation of the  
16 cities, and have you advised the cities on any  
17 statewide issues that might be of benefit to the  
18 state as a whole, versus -- versus the cities'  
19 jurisdictional issue?

20 MS. HUNTER: I'm -- I'm sorry, I'm not  
21 sure I understand what you're getting at.

22 COMMISSIONER PERNELL: Okay, let me --  
23 let me make a point. If, in fact, California has  
24 an energy challenge, and if there was a situation  
25 where a city could help with that challenge by

1 helping themselves as well as helping the state,  
2 would you then advise the city to move forward or  
3 just not, or do you -- do the League get into  
4 those types of discussions with their --

5 MS. HUNTER: Well, let me give you an  
6 example of something that happened a couple of  
7 weeks ago. And frankly, I get phone calls fairly  
8 regularly, similar to what I'm about to describe.

9 We got a call from a city manager. They  
10 wanted to know what the process is for siting a  
11 power plant. They had something that they were  
12 working with a project proponent. They thought  
13 they could get online pretty quickly. They were  
14 enthusiastic about it. They, at that point, he  
15 wasn't sure whether it was going to be 49  
16 megawatts or 100 megawatts. And I explained to  
17 him some of the difference, and gave him some  
18 basic information on don't forget you need to get  
19 water board, air board, et cetera, and I think I  
20 referred him, I looked up in the state phone book  
21 for the number of the Siting Office at the Energy  
22 Commission.

23 So in that sense, we get calls fairly  
24 frequently, how do I plug into this -- no pun  
25 intended -- what's the process, how do I get more

1 information. Which is why we're so delighted  
2 we're having a session at our planners institute  
3 on -- on what's new in planning, what's the city's  
4 role, how do you go about doing that.

5 COMMISSIONER PERNELL: Right. And  
6 that's good. I mean, I think all of that's being  
7 a good advocate for your constituency.

8 Let me just mention, most of the time  
9 when cities -- cities will call you with those  
10 types of questions, and unless the city is the  
11 owner of the plant, it is up to the plant owner to  
12 get in touch with all of those folks to make the  
13 project go. But at any time that you need to get  
14 information to your constituency about our  
15 planning process, we are certainly happy to -- all  
16 you've got to do is call. You can call my office  
17 or the Commissioners. We have Bob Therkelsen, who  
18 heads our siting process. So we're -- we're happy  
19 to do that.

20 MS. HUNTER: Commissioner Pernell, if I  
21 might. You're correct that it's usually a private  
22 proponent, but many times, because the city is  
23 involved, or I know of one city that put out an  
24 RFP. They said we're open, come -- come do it.

25 COMMISSIONER PERNELL: We're open for

1 business.

2 MS. HUNTER: We even have some land for  
3 you. They wanted to educate themselves so they  
4 could be responsible local government officials,  
5 at the local level. And -- and I guarantee you, I  
6 will follow up with phone calls. One of the  
7 things that would be very helpful, and I am told  
8 that document's going to be available at our  
9 planners institute, is a summary of under for this  
10 type of facility, here's what the process is.  
11 Here's the local government role, here are the  
12 timeframes for this size, et cetera, that -- that  
13 local folks can have to better understand this  
14 whole new world, especially in light of the  
15 Governor's executive orders.

16 We keep hearing about the mitigation,  
17 air -- air mitigation issues, air credits.  
18 Anything that you have that summarizes it,  
19 recognizing that at the end of the legislative  
20 session some of this might -- might change. I'd  
21 love to have it and put it out on our Web site,  
22 and have it available at our workshops. I think  
23 that -- that would be very helpful.

24 COMMISSIONER PERNELL: Commissioner  
25 Laurie, did you want to comment on that, or -- I

1       can tell you that we -- the information is here.  
2       It's just a matter of collecting it. And I just  
3       have two other points, and then I'll be done.

4               Do you advise or have your city -- any  
5       of your constituents ask you about environmental  
6       justice issues, whether it's concerning power  
7       plants or other building facilities, or -- or  
8       manufacturing facilities?

9               MS. HUNTER: They don't -- they don't --  
10       I have not received a call specifically asking me  
11       about environmental justice issues. However, one  
12       of our policy -- one of our eight standing policy  
13       committees, environmental quality, which consists  
14       of 40 city officials, elected and staff, and they  
15       make recommendations on issues and legislation for  
16       our board of directors. They were very interested  
17       in environmental justice. I think last year they  
18       had it on their work program. It may've been the  
19       year before, I can't remember. We had a speaker  
20       on environmental justice. We had a paper  
21       prepared, background papers.

22               So in that extent, yes, they are  
23       interested. I believe a year ago, maybe more,  
24       either the planners or the city attorneys, I don't  
25       remember, have -- had a paper, had a discussion on

1       that.

2                   COMMISSIONER PERNELL:  I just mention  
3       that because it's going to be an issue coming up  
4       with -- with the executive order from the  
5       Governor, and the feds, so that might be something  
6       to look at.

7                   Let me end on a positive note.  And that  
8       is, you mentioned something that I think is very  
9       critical to the entire process, and that is more  
10      education and communication with the cities and  
11      with the -- California in general.  I mean, I  
12      think people need to know what the crisis is and  
13      how we can go about addressing that and saving  
14      money.

15                  So let me just say that the Commission  
16      has a -- a communication program.  We are doing  
17      town hall meetings.  We are meeting with state  
18      government, federal government.  I was back in  
19      D.C. on this issue.  Local government.  So the  
20      information is out there.

21                  Now, whether or not we have an  
22      opportunity, given our workload, to sit down and  
23      get it out to everybody, but, you know, what I  
24      would offer here is that the information is here.  
25      The League, LAFCO, and everyone else is welcome to

1       it. It's public information. But we have, and  
2       have been putting out tips on how to conserve  
3       energy. There's a how-to document on our siting  
4       process. So that information is here, and we  
5       would just encourage folks, you know, to ask for  
6       it. And if you can't get it, let me know, because  
7       information, education, is the key to helping  
8       solve this problem.

9               MS. HUNT: I will be following up,  
10       because if any of those documents were available,  
11       we could link from our Web site to yours if  
12       they're on there. I think that would be -- that  
13       really would be great.

14              COMMISSIONER PERNELL: Claudia would  
15       know more -- Claudia Chandler is our Information  
16       Officer, and she can help you with that area.  
17       Thank you.

18              PRESIDING MEMBER LAURIE: Thank you,  
19       Commissioner Pernell.

20              Thank you, Ms. Hunter.

21              Mr. Fuz. I -- Greg, you're next on the  
22       agenda, so whoever -- whoever wants to go next.  
23       Doesn't make any -- Greg, did you have --

24              MR. FUZ: Mr. Greg Fuz.

25              PRESIDING MEMBER LAURIE: Okay.



1                   MR. FUZ: Thank you, Commissioner Laurie  
2                   and Commissioner Pernell, fellow members of the  
3                   panel.

4                   I work for a small city in central  
5                   California, and I'm going to be making some  
6                   comments based on that perspective, and I  
7                   apologize for the quality of the overhead here.  
8                   But I just wanted to start with showing you the  
9                   situation that we have in the City of Morro Bay  
10                  with respect to the prospect of power plant  
11                  modernization.

12                 And for those of you who aren't familiar  
13                 with Morro Bay, what you see in the upper slide,  
14                 upper half of the screen, is the existing power  
15                 plant. It has three 450 foot stacks, and it's  
16                 very visually apparent from State Scenic Highway  
17                 1, which runs through the community. And to the  
18                 immediate right, that -- that large mass in the  
19                 distance is Morro Rock, which is a State  
20                 Registered Historic Landmark, and is juxtaposed  
21                 with the power plant and State Scenic Highway 1.

22                 PRESIDING MEMBER LAURIE: Can I  
23                 interrupt a second. Rick, what's the status of  
24                 the Morro Bay case?

25                 MR. FUZ: There is an AFC on file. I'm

1 not going to be commenting on the specifics of  
2 that AFC at all.

3 MR. BUELL: It's currently under review.  
4 It's in the discovery phase.

5 PRESIDING MEMBER LAURIE: Okay.

6 MS. ALLEN: Commissioner Laurie, Kae  
7 Lewis, the Morro Bay Project Manager, is here in  
8 the audience.

9 PRESIDING MEMBER LAURIE: Okay. Well,  
10 Greg -- Greg has indicated a recognition that  
11 we're not going to get into the specifics of the  
12 case, so that -- that's fine.

13 MR. FUZ: No, absolutely not. No, and  
14 I'll be moving away from this in just a moment.  
15 But the slide below, the bottom half of the  
16 screen, shows the proposal that was submitted by  
17 the Applicant originally, about a year and a half  
18 ago. And if you look carefully, what you'll see  
19 is that the existing plant remained. Two out of  
20 the three stacks remained, and kind of hazily in  
21 the distance there you can see two new stacks  
22 between the existing plant and the rock.

23 That was the starting point for the City  
24 of Morro Bay in learning about the California  
25 Energy Commission's review process, and the

1 prospect of changes to the existing power plant.

2           What we'll end up with in a few moments,  
3 after I go through my presentation, is to show you  
4 where we are now, and to show you how an  
5 aggressive partnership between the Energy  
6 Commission Staff, the City of Morro Bay staff, as  
7 well as the Applicant, have resulted in a project  
8 that has changed from what I refer to as a  
9 potential "LULU", "Locally Undesirable Land Use",  
10 to a -- to a potential "WOW", which is a  
11 "Wonderful Opportunity for a Win". And that's --  
12 that's what this presentation is going to be  
13 about.

14           And really, we'll be addressing -- I'll  
15 be addressing primarily the questions three and  
16 four of Issue Number 1, which have to do with  
17 balancing local control with the state's needs and  
18 how can local actions be expedited. I think we  
19 have a pretty good example of a process that  
20 exemplifies how that can be done, and I'll be  
21 touching on that more specifically in this  
22 afternoon's session.

23           But what we've learned in -- in our  
24 experience to date is that early coordination is  
25 critical between the local agency and the Energy

1 Commission, as well as the Applicant. And in  
2 order to allow that to happen, particularly for  
3 smaller cities -- and Morro Bay is a city of  
4 10,000, with very limited resources -- in order  
5 for the appropriate coordination to happen to set  
6 the stage for this kind of a partnership, adequate  
7 resources need to be provided early in the  
8 process.

9 And in our case, we took the initiative  
10 to negotiate a reimbursement agreement with the  
11 Applicant. It would be very helpful, from the  
12 state's standpoint, to put in place appropriate  
13 policies, standards, statutes, et cetera, that  
14 recognize that early reimbursement mechanisms are  
15 important, even before formal applications are  
16 submitted to the Energy Commission, so that the  
17 early coordination that can result in a win can  
18 occur.

19 What we've specifically envisioned doing  
20 with the resources that we requested early on in  
21 the process is to establish a pre-application  
22 process where before a project even enters the  
23 Energy Commission's formal review process, there's  
24 an opportunity for local consultation. And we  
25 would recommend that that would be a way that many

1 of the -- the obstacles or stumbling blocks that  
2 seem to appear late in your process and other  
3 jurisdictions can be minimized. If -- if, through  
4 either statute or guidelines, or -- or  
5 regulations, you can establish a process that  
6 funds early, mandatory, locally based pre-  
7 application process between an applicant and the  
8 affected local jurisdiction, before a project even  
9 goes into the Energy Commission process.

10 COMMISSIONER PERNELL: On that point --  
11 excuse me. Is -- we know when we get a project in  
12 here. But do the applicant normally contacts the  
13 city or the local jurisdiction, even before they  
14 submit an application to us?

15 MR. FUZ: In our case, they did do that.  
16 But, again, without having the resources in place  
17 it was, I'm sure, very frustrating for the  
18 Applicant to try to elicit information from the  
19 city in various issues, because the resources just  
20 weren't there to allow us to -- to respond to the  
21 -- to the level of detail that was necessary. And  
22 by having a mechanism where those resources can be  
23 in place early, and there's a mandatory local pre-  
24 application, then that sets the stage for  
25 answering as many of these questions early on, and

1 identifying issues and giving the Applicant a  
2 chance to modify the project to preemptively deal  
3 with some of these issues before they even get  
4 into your process.

5 And we think it would be a very valuable  
6 way of -- of minimizing the -- the late hits, I  
7 think, that you've been seeing in -- in some land  
8 use issues.

9 COMMISSIONER PERNELL: It might even  
10 expedite the process a little bit if --

11 MR. FUZ: Exactly.

12 COMMISSIONER PERNELL: And --

13 MR. FUZ: And again, some of the  
14 benefits of doing that would be identify issues  
15 early, allow for modifications to the project to  
16 avoid potential conflicts with local -- local  
17 issues and local policies. And also, build in an  
18 opportunity for early public input. You know, we  
19 -- we think that's served our particular case  
20 very, very well.

21 So early coordination, providing  
22 resources early in the process to allow for a  
23 local pre-application process to avoid conflicts  
24 later, identify issues earlier, we think are very  
25 important steps.

1           All those early actions I think lead to  
2           greater clarity, once an applicant gets into your  
3           process. And greater clarity, particularly with  
4           respect to local issues, will ultimately expedite  
5           your process.

6           And in terms of clarity issues that I'm  
7           referring to, in particular, are areas of  
8           traditional local concern, where if this weren't a  
9           power plant, if it were a shopping center or a  
10          Costco, or, you know, whatever the case may be,  
11          the issues would be paramount in the local review  
12          process, such as traffic, noise, socioeconomic  
13          impacts, impacts on public services, et cetera.

14          And when I say that clarity is  
15          important, what I mean is in our experience the  
16          existing process in many cases isn't clear whether  
17          the city's role in these areas is advisory to the  
18          Energy Commission, or whether the city's role is  
19          in the role of issuing approvals related to these  
20          matters. The timing of the city's involvement in  
21          these various issues is sometimes unclear. The  
22          milestones for the city injecting itself into  
23          these issues throughout the process, I think need  
24          to be clarified.

25          And by clarifying those issues, that

1 will expedite, I think, the overall process, and  
2 eliminate uncertainty and confusion with regard to  
3 what the city's specific role is within your  
4 process.

5           Along those lines, I would recommend  
6 that a position of public agency ombudsman be  
7 considered, for example. There's a Public Adviser  
8 currently that focuses on helping citizens  
9 participate in the process, and we think that's  
10 very good. But I know from experience that your  
11 Public Adviser is extremely dedicated and  
12 extremely busy. And it would be very helpful to  
13 have either an assistant in that position, or a  
14 new position that would focus on public agency  
15 coordination.

16           And what I mean by that is we don't need  
17 to reinvent the wheel here every time we have a  
18 new siting case in a city or a county. We need to  
19 have the benefit of the lessons, the experience,  
20 the -- the approaches to dealing with these issues  
21 that involve throughout the state, in other  
22 jurisdictions, and having a position that would  
23 act as a central clearinghouse, so to speak, to  
24 gather that information and then disseminate it to  
25 the public agencies that are involved in the



1 process.

2 PRESIDING MEMBER LAURIE: That -- well,  
3 that's -- let me ask Rick or Kae. Once an  
4 application is submitted, who on Staff takes  
5 primary responsibility for communications with the  
6 local government? Is it the Project Manager?

7 MR. BUELL: The Project Manager has a  
8 significant role in identifying and working with  
9 local agencies. However, each of the individual  
10 Staff, or in this case the land use folks, would  
11 be dealing directly with the cities on land use  
12 issues.

13 PRESIDING MEMBER LAURIE: Okay. But  
14 it's somebody, then, under the authority of the  
15 Project Manager.

16 MR. BUELL: Yes.

17 PRESIDING MEMBER LAURIE: What happens  
18 if a jurisdiction becomes an actual party  
19 intervenor? What happens to that communication?

20 MR. BUELL: That communication, to a  
21 certain degree, is tightened up. It's less easy  
22 for Staff to communicate with the intervenor.  
23 Certainly we're potentially at odds at various  
24 workshops and hearings. They may have a different  
25 point of view, and we have to respect that.

1                   PRESIDING MEMBER LAURIE:   Okay.   Thank  
2                   you.

3                   MR. FUZ:   Going beyond greater clarity  
4                   and the idea of having a -- a clearinghouse for  
5                   disseminating information to local agencies on the  
6                   process, on the various approaches, we think it's  
7                   important that appropriate incentives are  
8                   included, either through, again, legislation, or  
9                   -- or appropriate regulations to provide  
10                  incentives to encourage local support for these  
11                  types of projects.

12                  And examples of that would be protecting  
13                  existing funding sources relating to power plant  
14                  development.   Perhaps encouraging new funding  
15                  sources related to establishing new power plants  
16                  or modernizing existing plants.   Funding sources  
17                  that would benefit the local jurisdiction.   And  
18                  this is a -- a different issue for cities versus  
19                  counties that, you know, I'm sure you're -- you're  
20                  aware of.

21                  But in a power plant situation that's  
22                  within a county's jurisdiction, the county is  
23                  typically the primary beneficiary of any increased  
24                  property tax revenue, for example.   And that is  
25                  the case in Monterey County, with the Moss Landing

1 project. There was a -- a tremendous increase in  
2 property tax revenue generated by the project, and  
3 the county was the primary beneficiary.

4 In the case with the city, and, for  
5 example, the City of Morro Bay, even though the  
6 power plant is situated right in the middle of the  
7 community, a community that depends on tourism for  
8 its livelihood, that has numerous scenic resources  
9 that are impacted by the project, from a fiscal  
10 standpoint the city is only the beneficiary of a  
11 very small amount of the property tax revenue from  
12 the project. In the case of Morro Bay, it's 12  
13 percent of the overall property tax revenues. The  
14 rest goes to the counties or to various other  
15 agencies.

16 So it would be very helpful, I think,  
17 from a general standpoint, if small cities in  
18 particular are asked to take on the burden of  
19 providing for energy facilities of statewide  
20 significance, which this is one of those cases,  
21 Morro Bay's plant would be a -- nearly a 1300  
22 megawatt plant, it seems only reasonable that a  
23 good percentage of the fiscal benefits should flow  
24 to the community, as well.

25 MS. HALL: Can I --

1 COMMISSIONER PERNELL: You understand --

2 MS. HUNTER: Can I throw something in?

3 There's legislation that does just -- just that.

4 It was AB -- SB 30x, it's now folded into SB 28x,

5 by Senator Sher. And it's -- everyone's still

6 working on -- on the drafting, but the concept is

7 the host jurisdiction would get 100 percent of the

8 property tax resulting from the increased assessed

9 value of the facility.

10 PRESIDING MEMBER LAURIE: And Senator

11 Bowen's point was well made, and that is the locus

12 of the plant site may not be equivalent to where

13 the impact is.

14 MS. HUNTER: And that's something we're

15 going to talk about.

16 PRESIDING MEMBER LAURIE: Yeah. A very

17 good issue.

18 MR. FUZ: Just a couple of other ideas

19 for -- for incentives. There could be a policy

20 established within the Energy Commission when

21 evaluating these types of projects that the

22 standard for mitigation is that local agencies

23 will essentially be held harmless for any impacts

24 during construction and demolition as a result of

25 the project. Projects like this have huge impacts

1       --

2               PRESIDING MEMBER LAURIE:  Greg, let me  
3       -- let me interrupt you just a second.

4               Commissioner Pernell, did you have a  
5       question that --

6               COMMISSIONER PERNELL:  Actually, Ms.  
7       Hunter answered my question, or at least -- she  
8       did answer -- I was going to say that there's  
9       legislation to do that, and we can't, as a  
10       Commission, dictate what percentage or property  
11       taxes go where.  That is certainly a legislative  
12       issue.

13              PRESIDING MEMBER LAURIE:  No, we -- we  
14       may end up being -- being asked to.

15              MS. HUNTER:  I think we'll work it out  
16       locally.

17              MR. FUZ:  But just for example, the  
18       prospect of -- of having a -- essentially an  
19       increase of ten percent in the local population  
20       due to the construction workforce descending on  
21       the community for a period of, you know, months to  
22       years, depending on the ultimate schedule, raises  
23       concerns about adequacy of police and fire  
24       services, impacts on revenue from tourism, effects  
25       on tourism, et cetera.  It would be a very helpful

1       incentive from the local standpoint if there was a  
2       policy in place that said no matter what happens,  
3       the local community will be held harmless from any  
4       construction related impacts on public services,  
5       fiscal impacts, et cetera. We think that would be  
6       a very strong incentive.

7               Finally, an issue that I think applies  
8       across the board to numerous sites like this,  
9       particularly modernization sites, is that in this  
10      case, there are essentially two entities involved  
11      in this site. There is the Applicant for the  
12      modernization of the power plant, and then there's  
13      the utility, the public utility that still retains  
14      control and ownership of adjacent transmission and  
15      switchyard facilities.

16             In our case, as you'll see in a moment,  
17      we've -- we've reached a satisfactory result,  
18      potentially, with the design of the power plant.  
19      Or, I should say, its configuration. But because  
20      the Applicant for the modernization has no control  
21      over the ancillary facilities, the switchyard, the  
22      transmission lines, et cetera, those are staying  
23      the same, exactly the way they are. And they  
24      present a tremendous visual blight to the  
25      community.

1                   So an incentive that could be  
2           considered, perhaps, is that for modernization  
3           projects and new projects that connect to existing  
4           facilities, that are in separate ownership or  
5           control, that there be some mechanism for looking  
6           at those existing ancillary facilities and also  
7           finding a way to modernize them, as well, to  
8           further improve the overall positive effects of  
9           the project.

10                   These ideas we think would build a much  
11           stronger partnership between the state and local  
12           interests in these types of projects. We think  
13           they would expedite the process, and this  
14           afternoon I'll go into more specifics of how  
15           they've expedited the process in our particular  
16           case.

17                   Just, Rick, can you put up the next  
18           slide?

19                   Just to give you a quick preview. If  
20           you look at the lower slide now, that's where  
21           we've ended up. And that involves removal of the  
22           entire existing plant and development of a new  
23           facility that has twice the new generation, that  
24           will be built in half the time, and, as you can  
25           see, has a much smaller visual impact than the

1 existing condition.

2 PRESIDING MEMBER LAURIE: Yeah, but what  
3 are you going to do about that rock sitting in the  
4 middle of the picture?

5 (Laughter.)

6 MR. FUZ: So we think there's definitely  
7 a potential for a win/win situation, and with the  
8 proper incentives and resources, and early  
9 coordination with local agencies, we think we can  
10 work successfully to do that.

11 PRESIDING MEMBER LAURIE: Thank you,  
12 Greg, very much.

13 COMMISSIONER PERNELL: Thank you. I  
14 just have one question. And -- and I want to  
15 thank you also for your ideas and suggestions.

16 When you talk about resources early on,  
17 are you talking about resources for consultant  
18 fees to help look into this, or -- what are we  
19 talking about there?

20 MR. FUZ: Yes. Not necessarily  
21 consultants to look into the project, but at least  
22 having resources. If we needed to get a  
23 specialized consultant, for instance, an engineer  
24 or a -- or a noise expert to advise the city early  
25 on on consistency of various policies, that would



1 be helpful.

2 In our case, we were very pleased to  
3 reach an agreement with the Applicant that allowed  
4 us to do that. And we assembled a team of  
5 technical experts that gave the city the  
6 opportunity before the new application was  
7 submitted to provide for significant input, which  
8 the Applicant then used to redesign their project,  
9 to some extent, and minimize the amount of  
10 potential controversy that would have to be dealt  
11 with in your process.

12 So by spending a little bit more time  
13 early on and giving the agencies those resources,  
14 theoretically, you should be able to streamline  
15 your process fairly significantly.

16 COMMISSIONER PERNELL: Well, you know, I  
17 think that's a -- a great idea, to get most of  
18 this stuff done up front. Let me just say that  
19 we, from what I know about being on a local  
20 planning commission, there are fees for permits.  
21 We can't charge fees, so, you know, and I don't --  
22 I can ask Staff about this, but I don't think we  
23 have the resources to provide the funds. I think  
24 you were very forward thinking in getting it from  
25 the Applicant.

1                   But right now, I don't see the mechanism  
2                   for the Energy Commission to provide funds for  
3                   cities or counties.

4                   PRESIDING MEMBER LAURIE:   Yvonne?

5                   MS. HUNT:   I should've --

6                   MR. BUELL:   If I might respond to  
7                   Robert's comment.  I'm sorry to interrupt, but  
8                   there is provisions in the Warren-Alquist Act and  
9                   our regulations to provide reimbursement to local  
10                  agencies.  So there is, during the siting case, I  
11                  think Mr. Fuz' point was there's nothing for  
12                  prefiling or doing any up front work.  So --

13                  MS. HUNTER:   And -- and I think -- no,  
14                  and I was going to say a similar thing.  SB 28x  
15                  includes \$3 million to assist local governments in  
16                  streamlining and expediting permits, and actually  
17                  I don't know whether they got the idea from us,  
18                  but we had been suggesting that type of financial  
19                  assistance for local governments.  Clearly, if  
20                  they get reimbursed by the applicant, then -- then  
21                  we have to balance it out.

22                  But that kind of money could be used  
23                  exactly what -- what you're talking about.

24                  MR. FUZ:   If -- if I can just put in a  
25                  plug for changing that amount, \$3 million wouldn't

1 get very far.

2 MS. HUNTER: I agree. However --

3 MR. FUZ: Just -- just to give you an  
4 example --

5 MS. HUNTER: -- we do what we can.

6 MR. FUZ: -- you know, we've already  
7 spent somewhere between a half million and a  
8 million dollars related to these types of pre-  
9 application reviews and activities, and that's  
10 just for one project.

11 COMMISSIONER PERNELL: I have a follow-  
12 up question for Rick on the Warren-Alquist Act.  
13 Where does the funds come from?

14 MR. BUELL: The applicant provides the  
15 funds.

16 COMMISSIONER PERNELL: Right, the  
17 applicant, which is kind of where we are. I know  
18 we didn't have the money. I'm -- I'm broke.

19 (Laughter.)

20 COMMISSIONER PERNELL: It sounds -- just  
21 one final comment. And it sounds like there --  
22 there are a number of pieces of legislation, it  
23 sounds like the -- certainly the League of Cities  
24 is on board with -- aware of these. And -- and,  
25 you know, we all need to be looking at them and --

1       and perhaps lobbying together. And I like the  
2       presentation by LAFCO and their involvement, or  
3       perceived involvement as we go along, and maybe  
4       that can be a vehicle, as well.

5               So for me, this -- I know it's almost  
6       twelve, but this has been a lot of great  
7       information, and the suggestions have been great.

8               PRESIDING MEMBER LAURIE: Thank you,  
9       Robert.

10              Mr. Last, County of Sutter.

11              MR. LAST: Thank you. I appreciate your  
12       Committee's effort to hold the workshop here and  
13       take some input from -- from all of us. And I do  
14       hope that as a result of this, something can be  
15       done to change the process and make things a  
16       little bit easier for all those involved.

17              My comments come from the perspective of  
18       a local land use agency that went through this  
19       process in 1998 and 1999 as part of the siting of  
20       Calpine's proposal in Sutter County. Overall, I  
21       have one locational conflict, which identified as  
22       -- as what we saw as being a main theme, a problem  
23       with locating the site as a particular proposal,  
24       proposed site.

25              Also, I have five process issues, energy

1       -- primarily revolving around the Energy  
2       Commission and your process, that we identified as  
3       -- as being somewhat frustrating and which --  
4       which had a lot to do with maybe making the  
5       process take longer than it should have.

6               And I also identified a few  
7       recommendations which your Committee can consider,  
8       and hopefully pass on to the appropriate parties,  
9       and maybe look at some legislative changes to the  
10      -- to the process.

11             Basically, the locational conflict is  
12      something that you've all heard before, and the  
13      most common theme that our county heard as we  
14      processed this application in conjunction with the  
15      Energy Commission, was that this is, you know, we  
16      need power plants, this is a great power plant,  
17      they're doing wonderful things, they're including  
18      state of the art equipment to reduce air quality  
19      and water -- and water impacts. However, we --  
20      it's a bad location. We think you should go in  
21      the southern part of the county.

22             But we all know what that's going to  
23      result in. We're going to have the same people  
24      who live down there say no, it was better in the  
25      north part.

1                   Your -- your Committee sees that with  
2                   probably every proposal that comes before you.  
3                   And that's -- that's going to be one of the most  
4                   difficult things to -- hurdles to get over with,  
5                   get over.

6                   As far as the process issue, the first  
7                   one I've identified is the number of hearings.  
8                   Overall, I think there are way too many public  
9                   hearings.

10                  PRESIDING MEMBER LAURIE: Let me respond  
11                  -- let me respond to the last point.

12                  The difficulty is that if this were a  
13                  housing project, and a developer should be able to  
14                  come in and say we're putting this project on the  
15                  corner of First and A Streets because that's where  
16                  it should go, and by the way, it's going to make  
17                  everybody -- it's going to make everything look  
18                  better. It's going to really add to the  
19                  community.

20                  Power plants are a different deal. If  
21                  there is a direct local community benefit, it's  
22                  regional, at best. And yet, the impact is  
23                  perceived as being much more localized. So it's  
24                  not as easy to balance local benefit with local  
25                  impact.

1                   MR. LAST: That's clearly what we saw,  
2                   is that the opponents of the project, one of their  
3                   main arguments, or another one of their arguments  
4                   was we're going to build this plant here, but it's  
5                   going to serve the Sacramento region, not our  
6                   region. What is going to be our benefit if we're  
7                   going to be accepting this plant here. So, you  
8                   know, it was --

9                   PRESIDING MEMBER LAURIE: Well, it  
10                  doesn't even have to be Sacramento. It could be a  
11                  northern county.

12                 MR. LAST: As far as the -- one of the  
13                 first process issues that I've identified as being  
14                 a concern is I believe there were too many public  
15                 hearings involved with the process. There were 18  
16                 Energy Commission workshops, public meetings, and  
17                 other meetings that were open to the public in  
18                 Sutter County. That was just the Energy  
19                 Commission hearings. And some of those lasted all  
20                 day long, into the evenings in many cases.

21                 And that did not include the county's  
22                 public hearings that were held on the rezone and  
23                 the general plan, which was the Planning  
24                 Commission held one and the board held one.

25                 PRESIDING MEMBER LAURIE: Well, on that

1 point, it's a validation. The Energy Commission  
2 perspective is that you -- you need it. The  
3 development industry knows, never admit this, but  
4 they know, not that it's their plan, but people  
5 get worn out, frankly, and you -- you can't afford  
6 to do that. So there's unquestionably a proper  
7 balance that has to be met.

8 MR. LAST: The only reason I say there's  
9 too many hearings is that the way your workshops  
10 operated, you identified usually topics that would  
11 be discussed during that day. Regardless of what  
12 the issues were, the bottom line is people who  
13 were opposed to the project always came up with  
14 the same issues and brought the same issues up,  
15 meeting after meeting after meeting.

16 And so there was -- you had people that  
17 -- the people that were passionately involved and  
18 were passionately opposed to the project, you can  
19 have 100 meetings and they're still not going to  
20 be satisfied with changes to the project,  
21 incorporation of a new mitigation measure, and so  
22 on. And so there has to be, in my opinion, a -- a  
23 greater balance to having more focused meetings  
24 and definitely a reduction of the number of  
25 meetings, I think, to be more productive, to



1 shorten the process and make it more efficient for  
2 all those involved.

3 Another issue with the process. The  
4 process is set up almost like a trial, trial-like  
5 setting. And I believe that is very intimidating,  
6 confusing, and somewhat hostile for members -- to  
7 many members of the public. It -- it also -- it  
8 creates a -- it almost mandates that you have to  
9 have a great number of lawyers involved in this  
10 process to be effective in addressing your points.  
11 And many of the members of the public don't have  
12 attorneys. Local agencies sometimes are limited  
13 in their -- their resources to hire an outside  
14 counsel if they want to intervene, or if they want  
15 to be actively involved with the process to make  
16 change.

17 And --

18 COMMISSIONER PERNELL: Well, on that  
19 point, it doesn't eliminate the number of  
20 meetings, sounds like, because one of your  
21 suggestions is we have too many meetings, then the  
22 other is the process is so intimidating that it  
23 prevents people from participating. Which would,  
24 at least in my thought, eliminate some of the  
25 meetings.

1                   So I'm just trying to get a better  
2           understanding of -- sounds like you're  
3           contradicting yourself.

4                   MR. LAST: Well, I think you can -- I  
5           think the process can be set up where you have  
6           less meetings and more focused involvement. And  
7           that if you -- again, the intervenor process -- we  
8           had -- we had, just as an example, we had one  
9           member of the public who was very passionately  
10          involved in -- and opposed the project. He was  
11          one of the local residents.

12                   He had to become an intervenor in order  
13          to participate in the -- in some of the  
14          discussions at one point. He was not an attorney.  
15          He had some very valid points he had to make, he  
16          wanted to make. But because of the setting that  
17          it was in, where you're all -- you're being cross  
18          examined, you're -- you're asking questions to  
19          witnesses, he became very flustered and  
20          frustrated. Whereas if it was a more what I'd say  
21          a traditional public meeting, as you would have  
22          like the county, or a city level, and you -- when  
23          a city or county holds a review of a project, a  
24          public meeting, we have public comments. He  
25          would've been much more efficient and effective in

1       that type of a setting. And which he was, at  
2       later meetings, when he dealt with the county.

3               But he was definitely intimidated by  
4       that process of having to act like an attorney,  
5       question experts, and then get -- and then have  
6       cross examinations going on. There were clearly  
7       many members of the public were frustrated, and I  
8       think that hindered many members of the public  
9       from speaking up who normally would've spoke up if  
10      it was a different setting. If it was more of a -  
11      - I would say more informal type hearing, rather  
12      than this -- I mean, it -- it was very intense,  
13      even from the local -- from the local agency, the  
14      first couple of meetings we had, many members of  
15      our staff were kind of uncomfortable being in a  
16      setting where -- where it was, again, as if you  
17      were on trial. You were holding a trial.

18             And it just -- and our normal settings  
19      of public hearings that we have, when we look at a  
20      project in our county, it's generally not that  
21      intimidating, as intimidating. It's always  
22      intimidating being in front of the public, but.

23             Let's see here. As far as one of the --  
24      what I would call one of the abuses I see of the  
25      process, or how the process is being taken

1        advantage of, which causes delays in processing  
2        applications by your Energy Commission, is it's  
3        manipulated by groups to delay, cause additional  
4        work, in some ways, you know, eventually stop  
5        projects. And that -- in our particular case, we  
6        had one union organization which manipulated the  
7        process. They used the Energy Commission's  
8        process, and under the guise of being concerned  
9        with the environment, they -- they used your  
10       process to cause delays and cause additional work  
11       for your Staff. It caused -- in some ways I think  
12       it created substantial, or stirred up unnecessary  
13       public opposition and fear, because they have --  
14       they have attorneys that they bring in, and they  
15       identify all these issues. People get more  
16       stirred up than they normally would've been.

17                    And basically, the frustrating thing  
18       about that whole process was as soon as a contract  
19       was signed with that union, they walked away. The  
20       environmental issues disappeared. That -- that is  
21       -- that needs to change, that process. That --  
22       people -- that happens with CEQA, too, with the  
23       environmental process. I think the -- the intent  
24       is -- it's a well intentioned law, but it's so  
25       easily -- easily to be -- it's taken advantage so

1 easily --

2 PRESIDING MEMBER LAURIE: What's your  
3 position with the county?

4 MR. LAST: I'm the Planning Division  
5 Chief, so I'm in charge of the Planning  
6 Department.

7 PRESIDING MEMBER LAURIE: You are.  
8 Okay. And, Greg, what's your position with the  
9 city?

10 MR. FUZ: Public Services Director,  
11 which is a combination of planning, building, and  
12 public works.

13 PRESIDING MEMBER LAURIE: Great. Thank  
14 you.

15 MR. LAST: And, let me see here. The  
16 other thing was that with -- with the process, we  
17 had -- it was also very difficult, as after the --  
18 the project received county and -- county  
19 approval, then went through the Energy Commission,  
20 the Commission approved it, it received all the  
21 blessings from the state and federal agencies that  
22 were involved in terms of it met, you know, we  
23 were ready to approve it. Then -- then the -- the  
24 -- so we were basically ready to start  
25 construction.

1                   However, the Applicant is still required  
2                   at that point to obtain certain permits from other  
3                   agencies. And one of the things that happened in  
4                   our county was they were getting ready to start  
5                   construction, they had to obtain their  
6                   Environmental Protection Agency air quality  
7                   permit, and there's a provision in there which  
8                   allows people to challenge that permit, or  
9                   question the permit.

10                   And that resulted in a -- this was after  
11                   all the city -- the city and the -- or the county  
12                   and the Energy Commission approved it. That  
13                   caused a three plus month delay in the process.  
14                   And the scary thing about that was that even  
15                   though it was done in three months, the Energy --  
16                   or, the EPA acted in three months, that is  
17                   something that there's no deadline. There's no  
18                   requirement that they act on three months. It's  
19                   something that could go on for several months,  
20                   years, before action is taken.

21                   And that is something that -- it's out  
22                   of your hands, but it's something that, you know,  
23                   I think we need to look at and work with some of  
24                   the federal agencies when we talk about this  
25                   permit process, because we can go through this

1 exercise of expediting a permit, and you're -- you  
2 know, get this -- get these done much sooner at  
3 the local level, and also at your level. But  
4 there's always things that occur afterwards that  
5 can stop a project and -- and delay it for months,  
6 or years.

7 And that's something I think is going to  
8 require some close coordination with -- with some  
9 federal agencies, also.

10 One of the personally frustrating parts  
11 that myself and staff had was dealing with some of  
12 the Energy Commission Staff. And they were good  
13 people, they -- they were well intentioned.  
14 However, the problem we saw was that there's a --  
15 there's a lack of oversight over individuals who  
16 are working on specific sections of the report.  
17 Basically, you have a project manager who we  
18 worked very closely with and was very good. But  
19 when it came to dealing with specific sections of  
20 the Preliminary Staff Assessment and the Final  
21 Staff Assessment, he had no control over what --  
22 what the -- the end work product was.

23 He was basically at the mercy of those  
24 individuals who had no -- again, he had -- and if  
25 Staff -- if we disagreed with some of those Staff

1 members, in terms of their analysis, we believed  
2 they misinterpreted the local ordinances, and --  
3 of the county or some of their rules and  
4 regulations, we still had no -- you know, we would  
5 try to work with the project manager on that, or  
6 that person, but ultimately they had the say, and  
7 they could put in -- put in there what they  
8 wanted. That was a -- a little bit of a  
9 frustrating part to deal with on that.

10 And finally, the -- which was more of a  
11 -- we were playing a chicken and egg game, as far  
12 as who was to approve this project at the end.  
13 The final decision making was -- was a very  
14 difficult process, because the Energy Commission  
15 wanted the county to act and make its decision on  
16 land use, yet we couldn't act until we had the  
17 environmental document in our hands. And that --  
18 it took a little bit of working with your  
19 Commission. We eventually got that done, but  
20 maybe a way to resolve that in the future is just  
21 right up front, when applications are made, that  
22 the Energy Commission and -- when a local agency  
23 has -- is required to approve either a regional  
24 plan or a use permit, that when we, as part of  
25 that entitlement process, we have an agreement



1       with your Commission in terms of how that process  
2       will work.

3               But your Commission does need to  
4       understand, and I think you do understand now,  
5       that we can't act at the local level until we have  
6       an approved environmental document in our hands  
7       under the current -- the current laws.

8               PRESIDING MEMBER LAURIE: Sutter is the  
9       -- was the first of the modern applications to  
10      deal with that issue. We have dealt with that  
11      issue in most of our cases, and we recognize that  
12      that is a substantial problem. The Energy  
13      Commission is working on specifically identifying  
14      as a matter of policy, in fact, it may even be  
15      made statutory, that a specified document is to be  
16      utilized, and that document would -- needs to come  
17      out earlier in the process than it currently does.

18              MR. LAST: And I understand we were  
19      definitely a test case, and we were the first one  
20      through it. So we were -- it took, you know, we  
21      worked out a lot of the bugs. And maybe some of  
22      the bugs have been worked out since then, with --  
23      with the -- with that process.

24              As far as some of our recommendations.  
25      Working with a county that's very -- we expedite

1 projects very quickly, and this -- that project,  
2 by the time they submitted their application to  
3 your Commission and to us, it took about a year  
4 and three months to get approved. And that  
5 doesn't include the -- I think they -- Calpine  
6 first approached our county about a year before  
7 they even submitted an application, and kind of  
8 got an idea of what, you know, they were looking  
9 at the site. They got -- they started working  
10 with us on some land use issues, and potential  
11 environmental issues. So there was good  
12 cooperation early on.

13 But it was a, from a county that, you  
14 know, we -- our board is very interested in  
15 expediting projects to the extent possible, and so  
16 some recommendations I would have is that the  
17 Commission may wish to consider hiring or having  
18 on -- on hold environmental firms who will  
19 actually do the work for them. You know, prepare  
20 the Preliminary Staff Assessment, and Final Staff  
21 Assessment. However, you can have significant  
22 Energy Commission Staff oversight, you know, with  
23 an understanding that those -- those documents  
24 have to be prepared with all the rules that are in  
25 place now, based on your established guidelines.

1                   And if not, if you do not go that type  
2                   of a route, as far as the -- I believe maybe it's  
3                   important to give the project managers a little  
4                   more authority to work with the individual Staff  
5                   members to make sure there is an ultimate -- at  
6                   least one person's ultimately -- has authority  
7                   over what is put in those written documents, if  
8                   there are disagreements with -- with some of the  
9                   experts.

10                  As far as the number of hearings and  
11                  meetings, one suggestion I would have is that, you  
12                  know, almost --

13                  PRESIDING MEMBER LAURIE: Let me ask a  
14                  question. Rick, I -- I think I recognize the  
15                  point that Tom has raised. As a project manager,  
16                  what authority do you have over your section  
17                  writers?

18                  MR. BUELL: Don't have direct authority.  
19                  If there's an issue, a Staff member has prepared  
20                  testimony that a project manager thinks is  
21                  unfounded, unsupported by the evidence, has gotten  
22                  information from the local county that's contrary  
23                  to that information, he can take that issue  
24                  directly back to the unit supervisor, and if  
25                  that's not satisfied there, to the office manager,

1 and ultimately to Bob Therkelsen.

2 PRESIDING MEMBER LAURIE: But as project  
3 manager, isn't the entirety of the report and the  
4 completion of it on a specified date your  
5 responsibility?

6 MR. BUELL: Yes.

7 PRESIDING MEMBER LAURIE: And how does  
8 that correlate to you not being able to give day  
9 to day direction to the people that are working on  
10 -- on each of the sections that are ultimately  
11 your report?

12 MR. BUELL: The project manager has the  
13 authority to set the schedule. However, he  
14 doesn't have the authority to make sure that --  
15 how priorities are made within the division.  
16 That's a division decision on who does what.

17 PRESIDING MEMBER LAURIE: Well, it's the  
18 same problem we have in -- in the PIER program.  
19 Right, Bill? Is that from a civil service  
20 standpoint, it's a question that our project  
21 managers aren't in a -- a civil service category  
22 that gives them the authority to have day to day  
23 supervision over the people that are supposedly  
24 working for them. Right?

25 MS. ALLEN: That's exactly right.

1                   PRESIDING MEMBER LAURIE: Yeah. Eileen,  
2                   and you -- you face the same issue. And we face  
3                   the same issue in -- in PIER management, as well.

4                   MS. ALLEN: I'm facing a transition, and  
5                   I'm a new supervisor, and I was previously a  
6                   project manager. So I would be interested in  
7                   hearing from you, if you have another project in  
8                   your county, and my staff were not responsive.  
9                   That's about the best that unit supervisors can  
10                  do; do their very best to work with you and ensure  
11                  that their staff is listening.

12                  PRESIDING MEMBER LAURIE: And that --  
13                  again, I think the point is really well raised,  
14                  and it deals with the state personnel structure.  
15                  These folks who are project managers don't have  
16                  the authority to manage their staff, and we have  
17                  to -- we have to deal with that issue.

18                  MS. ALLEN: It's pretty frustrating for  
19                  project managers. There's a tremendous amount of  
20                  responsibility and pressure to get that document  
21                  out on time, and make sure it's a good document.

22                  PRESIDING MEMBER LAURIE: Because you --  
23                  you know, my preference is to say okay, Mr. Buell,  
24                  or okay, Ms. Allen, this is your baby. You're  
25                  responsible for it. But I can't fairly do that if

1       you don't have the ability to turn around and  
2       direct Staff to get it done.

3               MS. ALLEN:  That's right.  There's --  
4       that authority isn't there.

5               COMMISSIONER PERNELL:  This sounds like  
6       something that perhaps should be discussed at the  
7       Siting Committee, with recommendations as to how  
8       we -- whether civil service or not, how do we go  
9       about making it happen.

10              PRESIDING MEMBER LAURIE:  Just like the  
11       PIER program's been reorganized.  I -- I think we  
12       have to deal with this.  Thank you, Rick.

13              I'm sorry to interrupt you, Tom.

14              MR. LAST:  Okay.  Just a couple more  
15       recommendations here.  As far as the number of  
16       hearings, and I almost hate to say this because I  
17       know CEQA has flaws, but, you know, the -- I think  
18       the Commission may wish to consider a process as  
19       it relates to the environmental review of a  
20       project, the -- the CEQA process, where you have,  
21       or something similar to that, where you have a set  
22       review period of that environmental document, and  
23       you may have a couple meetings, a couple of public  
24       hearings to talk about where people can -- you  
25       have public hearings where people can raise

1 issues, and the -- the Staff can hear those, go  
2 back, and determine whether, you know, they would  
3 respond to each comment, determine whether they're  
4 true issues or not, and if warranted, make changes  
5 to the project. And then move on to the next  
6 level. Not this continued reiteration of  
7 intervenors coming in, and bringing up issues,  
8 time and time and time again.

9 Have a set period, where you release  
10 your environmental document, and have -- that's  
11 the public's opportunity, and you have, again,  
12 work in a couple of public hearings where you have  
13 -- where the public has an opportunity to provide  
14 comments on the project. That way, again, you're  
15 -- you're forcing people to get focused on their  
16 comments, and they have -- they have a window of  
17 opportunity to provide those comments.

18 And then they can also challenge it  
19 after that process is over. But, anyway.

20 One of the things that as far as  
21 locational issues, maybe one thing that -- and I  
22 believe Governor Davis had some -- there was some  
23 draft legislation, or maybe it's one of the things  
24 that the executive orders talked about this. But  
25 maybe what needs to be done is the Energy

1 Commission has -- does a survey of all the cities  
2 and counties in the state, and determine which  
3 ones are receptive to power plants. And then at  
4 that point, determine if there can be -- once you  
5 find those jurisdictions, then go and have a site  
6 analysis of potential locations within those  
7 communities, or within those counties, of where  
8 would be an appropriate place or possible site for  
9 these facilities.

10 PRESIDING MEMBER LAURIE: You will want  
11 to talk -- speak with your CSAC folks about 9x,  
12 does -- does deal with that basic issue.

13 MR. LAST: Yeah. And then, I mean, and  
14 then if -- if those communities don't have all the  
15 infrastructure, such as the power lines and the  
16 gas lines to get, you know, maybe there can be  
17 state incentives to provide that infrastructure in  
18 order to -- you know, you work with the state, the  
19 potential developer, and -- and the local  
20 jurisdiction to get those needed infrastructure  
21 services to that particular location. And maybe  
22 that's one way to help reduce some of the -- the,  
23 you know, the NIMBY problems that -- that we  
24 typically face on these -- these type of projects.

25 Let me see here. That's really all I



1 have right now, so I appreciate your hearing me.

2 PRESIDING MEMBER LAURIE: Thank you very  
3 much. We hope to leave time for comments at the  
4 end of this panel, if the audience can stick  
5 around before the lunch break.

6 Dr. Mason, Calpine/Bechtel. Good  
7 afternoon, sir. And for purposes of your  
8 presentation, the City of San Jose does not exist  
9 on our map.

10 DR. MASON: That's right. This is going  
11 to be somewhat broad-brushed, big picture, and I  
12 want to share some ideas.

13 PRESIDING MEMBER LAURIE: Can you  
14 explain your background a little bit, please, and  
15 -- and your -- your position at Bechtel?

16 DR. MASON: At Bechtel, I've been with  
17 Bechtel for 27 years, involved in nuclear power,  
18 fossil nuclear power plant siting, industrial  
19 facility siting worldwide, countless utilities in  
20 the U.S. for power plant siting and land use  
21 issues. And when you're with Bechtel long enough,  
22 you have several careers. I was environmental  
23 chief for a number of years. I developed  
24 environmental standards for Bechtel Power  
25 Corporation, including land use and siting issues.

1                   And then I've also been involved in  
2           design of power projects and worked,  
3           coincidentally, for five months on the detail  
4           design of the Sutter Power Project. So through no  
5           fault of my own, I have a convergence of a lot of  
6           experience to share with you about this.

7                   Prior to that, I -- prior to Bechtel, I  
8           taught at the college and university level in  
9           environmental studies, environmental planning, and  
10          land use, at UC Santa Barbara, with visiting  
11          professorships at the University of Colorado,  
12          Boulder, and University of Idaho. So that's --  
13          that's who I am.

14                  And I'm with Calpine/Bechtel, and we're  
15          engaged in development of merchant power plants in  
16          the Bay Area, and so that's my background.

17                  I want to compliment Staff on the  
18          preparation for the workshop. The -- the report  
19          you put out, the questions, and that kind of goes  
20          to a suggestion that -- and I've had mixed  
21          feelings about the structure of the Energy  
22          Commission, the Warren-Alquist Act, and the  
23          hearings and the quasi legal nature of the  
24          process, I've had mixed feelings about it.

25                  But on the other hand, when I think

1       about it, if there's something to be said about  
2       discipline and organization, and structure, and  
3       agendas before meetings, and then the obligation  
4       on the part of the Hearing Officers to -- to  
5       retain that discipline in the process, I think  
6       it's a good thing. The number of meetings, number  
7       of workshops, the redundancy in this process,  
8       again, we're not going to solve that problem  
9       today. But at least I think the public needs to  
10      be involved. How much, how often, and over what  
11      duration is -- is kind of an open question.

12               But, again, I want to thank the CEC  
13      Staff for getting this going with a nice agenda  
14      and good questions.

15               What I want to do is just hit briefly on  
16      energy facility siting, talk a bit about land use  
17      considerations, on energy facility siting. I also  
18      want to look at the context for land use planning  
19      issues, and I -- I've kind of used the term rapid  
20      urban population change, and I'll explain a little  
21      bit more about that. And then some suggestions.

22               On energy facility siting, this is a  
23      process that is actually fairly simple. I've done  
24      it all over the world, and it's -- it's a -- it's  
25      a process that requires some objectivity. It

1 needs to be systematic, interdisciplinary, and the  
2 -- the ultimate goal is to create a disclosure  
3 document or some sort of a document that logically  
4 explains why a power plant is needed at a  
5 particular location, and then the logic that has  
6 led to that decision.

7 The Nuclear Regulatory Commission, for  
8 example, has in Reg Guide 4.7, well, they have Reg  
9 Guide 4.2 for the environmental report, but Reg  
10 Guide 4.7 dealt with power plant siting. And in  
11 that process, there was a fairly long process to  
12 make sure that the rationale and the criteria was  
13 made very clear as to why a nuclear power plant  
14 would be suitable for sites A, B, C, whatever.

15 So I guess what I'm saying is that the  
16 -- before a project gets to the Commission for  
17 review, it's pretty important for the Applicant  
18 and any proponent to have pieced together a fairly  
19 complete picture on how we got there, how we got  
20 the site, and why we believe this site is  
21 suitable.

22 When I say disclosure, it means -- and  
23 this kind of goes to the heart of the dichotomy  
24 between the project manager, for Staff, and Staff  
25 support. Ultimately, you have common objectives.

1       You're trying to create a document that holds  
2       water, that's technically sound and adequate, that  
3       makes sense in a -- obviously a compressed  
4       timeframe. But no one's served if the document is  
5       not a good document.

6               And so therefore, from the Applicant's  
7       standpoint, we want to create documents that cover  
8       all the bases, are complete, and then we expect  
9       the Staff, when they review the project, to do the  
10      same thing. Because facts are facts.  
11      Relationships are relationships. And we want to  
12      make sure that all the relevant facts are  
13      considered. So I guess what I -- my suggestion  
14      there is to -- to give the process enough room,  
15      enough peer review, enough time to make sure that  
16      we get all those facts properly characterized for  
17      the project.

18             When I say basic template, my final  
19      bullet on this slide, I'm just saying that a basic  
20      template should cover all the things that I think  
21      have been touched on already this morning; namely,  
22      the fuel source, the water source, the connection  
23      to the transmission system, environmental justice  
24      issues, if they're relevant to the particular  
25      location. In other words, power plant siting

1       should, if it's done properly, should cover all  
2       the bases, so that when we get to the point of the  
3       AFC filing, most of these bases are covered well  
4       enough so that they're clear and complete.

5               My next slide the goes to what I call  
6       land use considerations, and none of what I'm  
7       saying is particularly new, but I just want to  
8       state it so that you kind of know where I'm coming  
9       from as a basis for my recommendations.

10              Land use considerations, present land  
11       use, planned land use, these are the types of  
12       things, whether you're in Alabama, Algeria, or  
13       Argentina, all say the same thing. How is the  
14       land being used, what are the plans for this  
15       particular area where -- within which we're  
16       looking for a plant site. And that includes  
17       consistency with the rules, regulations,  
18       standards, statutes, and even our friends from  
19       LAFCO. I mean, the whole thing requires kind of a  
20       big tent to capture as many of the players as  
21       possible to make sure that we know -- and I think  
22       someone used the term the -- the regulatory and  
23       jurisdictional landscape in which we are proposing  
24       a plant.

25              Finally, when I say convergence of

1 issues, in terms of land use it's -- in almost  
2 every case, most so-called issues can be  
3 mitigated, but it's amazing how so many issues  
4 that -- that -- I guess what I'm saying is land  
5 use becomes kind of a catch-all for decision as to  
6 whether a project is acceptable or not acceptable.  
7 The project sometimes, few projects fail because  
8 of noise, because noise can be mitigated. Unless  
9 the project's totally on wetlands, but if there's  
10 a wetlands issue there's some mitigations there.  
11 There's a lot of things that can be done to make a  
12 project acceptable.

13 But land use, I define this as kind of  
14 the bedrock issue as to whether the community or  
15 region wants the project, or they do not want the  
16 project.

17 So that takes me to my next slide, and I  
18 have to kind of -- I want to go over this, but --  
19 as quickly as I can. I label it the context for  
20 land use planning issues. In a perfect world, if  
21 there was no growth, or little growth, or little  
22 demand for energy, power plant siting would be  
23 kind of a leisurely process. No pressures, no  
24 problems. But what we find in California, and in  
25 many places, we are working in a very compressed,

1       intensified setting. Urbanization of agricultural  
2       land, prime farm land issues are big. Rapid  
3       population growth, and then rapid infrastructure  
4       expansion.

5               And then that leads to a whole series of  
6       jurisdictional, intergovernmental disputes and --  
7       and multiple headaches, again, that require  
8       reconciliation, resolution, because when a power  
9       plant project drives up, when an applicant appears  
10      with a project, through no fault of their own  
11      they're right in the middle. They're right in the  
12      middle of a process that unless they understand  
13      it, they're going to suffer in more ways than one.  
14      So my -- my signal is to -- it's very important to  
15      look at the context within which these projects  
16      are proposed.

17             My concern, then, is with -- with all of  
18      this change where you find land use maps are out  
19      of date, zoning maps that are out of date, you  
20      find property which you think is available and all  
21      of a sudden there are tilt-up buildings on it.  
22      All of a sudden, a rapidly urban -- urbanized  
23      area. What I say is sometimes suitable power  
24      plant sites are lost in the process.

25             In other words, years ago, if we



1       scratched our head and said we ought to think  
2       about using that heavy industrial area as a place  
3       for a power plant, no one was worried about that,  
4       because before deregulation the necessity wasn't  
5       there, the power was always provided by PG&E, and  
6       power plant siting was not part of the local land  
7       use planning process.

8               And when I say suitable, yeah. Suitable  
9       power plants lost forever. And also, the planning  
10      infrastructure, as has been mentioned this  
11      morning, in terms of zoning regulations, those  
12      types of things, specific provisions, as the -- as  
13      you have mentioned in your background document,  
14      are not provided for power plants. And I -- I  
15      tend to think that's a good idea. I think that a  
16      project, an applicant who comes to a city or a  
17      community, should come with a fairly complete,  
18      cohesive description of the project so that that  
19      community, whether it's city, county, whoever, can  
20      digest it and begin to understand what is being  
21      proposed. And then, they can always work the  
22      zoning issue, the planning issue, the -- the  
23      paperwork, if you will, to make it happen if they  
24      find it acceptable.

25             In other words, put the conditions that

1       are specific to that project in place, put that on  
2       the applicant, exactly what you want that  
3       applicant to do, and then let that become the  
4       starting point, rather than try to preempt, pre-  
5       plan, because I've got news for you. You -- even  
6       if you tried, you probably wouldn't get it right,  
7       and it might not make economic sense from the  
8       applicant's standpoint, and you'd burn up a lot of  
9       staff time and energy in another meeting, worrying  
10      about this issue. So I -- I'm saying put more --  
11      more burden on the applicant to do his or her  
12      homework in this process.

13               Some suggestions. With this background  
14      -- oh, another thing on this urbanization.  
15      Commissioner Laurie mentioned, he said well, you  
16      did a good job of explaining, you know, urban  
17      versus rural, and that -- that makes perfect  
18      sense. And I feel like to locate a power plant in  
19      an urban setting or an urbanized setting has got a  
20      real challenge. We meet the market needs, but  
21      we've got all these other problems that pop up.

22               But then it doesn't take much to drive  
23      from here to -- here to the city, or drive  
24      anywhere in the Central Valley of California or up  
25      and down the coast, and all of sudden, there may

1 be countryside out there, but the whole state is  
2 urbanizing. There is -- this is like the  
3 urbanized northeast quarter of the U.S. We're  
4 seeing it in California, where you're just simply  
5 not going to get away from land use issues. We're  
6 just facing them more intensely in the urban  
7 setting, but as the Sutter project learned, and  
8 every other project's learning, we're not going to  
9 get away from it.

10 So my recommendations are more generic,  
11 both urban and rural. It may be a little bit  
12 easier in a rural setting, but by degree, not that  
13 -- that easier.

14 My recommendations and suggestions.  
15 There's not a terribly great amount of surprise  
16 here, is to get ahead of the process, to be  
17 proactive in the land use and energy planning  
18 area. The applicants, and I endorse what has been  
19 said by all of the panel to -- especially working  
20 with the city and the community, get on board  
21 early in this pre-application phase to better  
22 define your project so that there are few  
23 surprises. If you have an environmental justice  
24 issue, you've got that settled down, solved, or --  
25 or dealt with. Wetlands, all the fatal flaws

1 issues should be buttoned up, so that the  
2 applicant doesn't serve up to the Commission an  
3 application that has got some -- some problems,  
4 because the Commission has enough to do as it is,  
5 Staff has enough to do, without having to deal  
6 with incomplete applications that don't tell the  
7 whole story.

8 And in the filing of that application,  
9 in a perfect world it should not be a big surprise  
10 to the county and city and LAFCO, and anyone else,  
11 regarding that particular project. So when it  
12 hits the Web site, or wherever things are posted  
13 nowadays, that it should not be a big surprise.  
14 Confer with affected communities early.

15 The third bullet, to interconnect -- and  
16 this is not my idea, but I thought I'd put it in  
17 because it -- it reflects what we're all saying --  
18 to interconnect with the electric and natural gas  
19 systems with capacity to minimize new -- new  
20 developments. Because those become land use  
21 issues, also. It's not just the power block, it's  
22 everything else related to the offsite linear  
23 facilities. This is from the DOE Center of  
24 Excellence for sustained development. They had a  
25 nice piece on this subject.

1                   Provide zoning or land use conditions.

2           I've already touched on that. Your -- the  
3           applicant should be prepared to -- to engage the  
4           local affected authority with a candid discussion  
5           about the conditions and requirements, because  
6           ultimately, those conditions and requirements are  
7           going to be mirrored in the CEC process for  
8           Conditions of Certification. So why not get a --  
9           get a head start on that process, so it's not a --  
10          a big headache.

11                  Let's see. Zoning, rezoning. Again,  
12          pre-zoning, and I don't know about this. Some  
13          people have said we should rezone, pre-zone, or do  
14          something. I'd almost suggest not. One idea that  
15          did come up is to if one could find the  
16          convergence of water, transmission, gas  
17          availability, suitable site, no wetlands,  
18          whatever, target it, and designate that as a -- as  
19          a potential power plant site from a land use  
20          planning standpoint, surround that with a buffer  
21          zone or something, and -- and dedicate that to  
22          power use.

23                  Theoretically, the -- the merchant plant  
24          developer community, of which I am a part, we  
25          should've found out and known about these, because

1       that's -- that's the risk we run in trying to find  
2       sites for our power plants. But why not give it a  
3       try. The cities and counties might want to  
4       consider looking at themselves, looking at their  
5       area, and looking at the energy crisis and saying  
6       you know, thinking about it, why don't we do some  
7       long-range planning on our own and make ourselves  
8       maybe a bit more attractive to developers.

9               But once you do that, I think it's, from  
10       a land use planning standpoint -- and this is kind  
11       of where I got back to some of my professional  
12       roots -- from a land use planning standpoint,  
13       there's the importance for care and custody of  
14       that decision to surround it with a buffer of some  
15       sort, so that you don't lose that power plant site  
16       forever. Because once they're gone, they're gone.

17              And -- and then last, but not least,  
18       I've touched on proximity to water, wastewater  
19       treatment. Another one is the brownfield  
20       development site. If your community or if your  
21       regions or counties have distressed properties,  
22       Superfund sites or bases, or things like that, the  
23       development community, the merchant plant  
24       developers are open to looking into those  
25       possibilities. And so that would be a win/win

1       situation, because you could take care of a land  
2       use issue that has been bedeviling you, perhaps  
3       for years, and substitute for that property a  
4       power plant.

5               And again, the power plants that we're  
6       talking about now, and I think someone else has  
7       mentioned this, this is a new generation. They're  
8       by no means small, but they are more efficient,  
9       and they are a lot more -- they're a lot more  
10      acceptable in terms of location flexibility, as  
11      opposed to a nuclear plant or a coal-fired plant,  
12      or a large oil and gas-fired plant, which requires  
13      tanks and things like that.

14             Anyway, that's where I am. Thank you.

15             PRESIDING MEMBER LAURIE: Thank you very  
16      much.

17             We're running late. My fault. But this  
18      is an opportunity for public comment or public  
19      questions for this panel. And comments or  
20      questions are welcome.

21             Sir. Could you state your name, please.

22             MR. ROWLEY: Joe Rowley, with Semptra  
23      Energy Resources.

24             Commissioner Laurie, Commissioner  
25      Pernell, I'd like to address the issue of

1 Commission's reliance on an EIR that's prepared in  
2 conjunction with a local land use decision.

3 Commissioner Laurie, in your comments  
4 you mentioned the extensive nature of the  
5 environmental analysis that's performed in  
6 compliance with CEQA. And we certainly agree with  
7 that assessment. It is very extensive, and  
8 comprehensive.

9 And we therefore support the concept  
10 that the Commission should be able to rely on a  
11 CEQA compliant EIR, rather than performing a  
12 redundant analysis of environmental issues. And  
13 we're prepared some concise language in the form  
14 of revisions to the siting regs that would  
15 accomplish that objective, and we'll submit those  
16 for your review.

17 PRESIDING MEMBER LAURIE: And what  
18 you're talking about is a circumstance where a  
19 power plant project is a part of a larger project?  
20 Is -- is that the issue? And where the larger  
21 project is a subject of a separately prepared  
22 environmental impact report.

23 MR. ROWLEY: Exactly. And we do have a  
24 particular project in mind that fits that -- that  
25 mold.



1                   The key issue, though, is that the  
2           applicant needs to know at the beginning of the  
3           process if the Commission's going to rely on the  
4           EIR. And the reason why that's so important is  
5           because the Commission would need to recognize  
6           that the CEQA guidelines present different  
7           criteria for environmental analysis than the  
8           siting regs. We wouldn't want to get partway  
9           through the process and then late in the process  
10          find out there's a hangup, because although by  
11          definition a CEQA compliant EIR presents a  
12          adequate analysis of environmental issues, it  
13          doesn't meet the letter of the siting regs.

14                   So I think that in order to avoid  
15          redundancy and truly streamline the process, there  
16          would have to be recognition of this difference.  
17          Our fundamental objective is to streamline. We  
18          want to avoid two analyses of essentially the same  
19          thing. And we would appreciate your consideration  
20          of this concept. And if you could fold that into  
21          your consideration of the other emergency  
22          revisions to the siting regs, it would help  
23          support our going forward with our project in a  
24          timely manner.

25                   PRESIDING MEMBER LAURIE: Thank you,

1       sir.

2                   Any other comments regarding -- or  
3       questions for this panel?

4                   If not, I will excuse and thank our  
5       panel. We deeply appreciate your time and -- and  
6       your thoughts as necessary ingredients for our  
7       report, and we'll see some of you back here by  
8       1:30.

9                   Thank you very much.

10                   (Thereupon the luncheon recess was  
11       taken.)

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1                                   AFTERNOON SESSION

2                           PRESIDING MEMBER LAURIE:  Welcome to the  
3                   afternoon session of the Land Use and Public  
4                   Participation Workshop portion of the Siting Area  
5                   Report.

6                           Thank you for attending this afternoon.  
7                   Mr. Buell.

8                           MR. BUELL:  Yes.  I think we'd like to  
9                   start off with Roberta Mendonca, to give an  
10                  overview of the process from the Public Advisor's  
11                  point of view.

12                          PRESIDING MEMBER LAURIE:  Thank you.  
13                  Ms. Mendonca.

14                          PUBLIC ADVISOR MENDONCA:  Good  
15                  afternoon, Commissioner and panelists.

16                           I start off by apologizing for my  
17                  computer ineptitude.  My goal for my opening  
18                  comment was to go through the Warren-Alquist Act  
19                  and seek out how many times the word "public"  
20                  appeared, and then seek out how many times the  
21                  word "Commissioner" appeared, and it would've been  
22                  my opening gambit to, I believe, say that "public"  
23                  appears more times than the word "Commissioner".

24                           But it's --

25                          PRESIDING MEMBER LAURIE:  Well, just go

1 ahead and make a representation, and we will  
2 believe you.

3 (Laughter.)

4 PUBLIC ADVISOR MENDONCA: It's pure  
5 supposition.

6 Actually, the Public Advisor's role is  
7 quite unique, and those of you who have heard me  
8 give my presentation before know that the Warren-  
9 Alquist Act does specifically create the role of  
10 Public Advisor. And the Public Advisor has been  
11 in existence since the creation of the Warren-  
12 Alquist Act.

13 My experience and my ability to relate  
14 about the projects really only goes back to 1997,  
15 because I have not always been -- there have been  
16 other Public Advisors who maybe would deliver a  
17 different message today.

18 But it's kind of a unique position. I,  
19 as the Public Advisor, I don't have a role as a  
20 decision maker, and I don't have a role as the  
21 Staff does in providing technical analysis. So I  
22 have to step back from the project and really get  
23 a handle on the process, so that when members of  
24 the public wish to participate, I can give them a  
25 sense of timing, I can give them a sense of

1       urgency, and I can give them a sense of direction  
2       where they need to focus their energy in order to  
3       make the comment that they're hopeful of making.

4               And from that detached, step back  
5       vantage point, I would comment that the decision  
6       makers who do have the responsibility must make  
7       informed decisions. And it is my observation that  
8       the best decisions, the best informed decisions,  
9       especially those decisions that do have impact on  
10      the public, must reflect the public's  
11      participation. And the public does have a role in  
12      providing overall general background, as well as,  
13      in some instances, technical background to the  
14      decision makers, and very frequently to the Staff.

15             So my role, I help everybody that show  
16      up at a public hearing. Me, personally, and my  
17      staff, we attempt to find who might be looking  
18      around trying to figure out what -- what's next.  
19      Somehow, the newcomers sort of have a look, you can  
20      spot them. And we try to make them comfortable,  
21      and know that there is a person, a support person  
22      that can answer questions for them in the room.

23             It's very interesting. I went over the  
24      24 projects, and that would include the recently  
25      certified projects, those that came in since 1977,

1 and I came up with 24, including the most recently  
2 filed. Of that, we had 114 Intervenors, and I  
3 didn't segregate how many times a single  
4 Intervenor appeared. It's a total of Intervenors.

5 Of the 114, there were 27 that I would  
6 call Public Intervenors. And by that, I'm using  
7 that to mean that they were unrepresented by legal  
8 counsel, and would be considered lay people in our  
9 process.

10 PRESIDING MEMBER LAURIE: And how many  
11 was that?

12 PUBLIC ADVISOR MENDONCA: Twenty-seven,  
13 out of 114.

14 PRESIDING MEMBER LAURIE: And are all of  
15 those currently participating in one case?

16 (Laughter.)

17 PUBLIC ADVISOR MENDONCA: No. You might  
18 have that feeling, but I -- no.

19 Another interesting part is looking just  
20 not at overall the number of people that intervene  
21 in a case, but just those public people, the lay  
22 people, there were only three public people in  
23 rural cases. There were six public people in  
24 small community cases, and there were 19 in what  
25 we would call urban areas. So that's probably not

1       any surprise. Where a project is thinking about  
2       coming in to a greater populated area, you are  
3       going to have more people that are going to be  
4       involved.

5               What does the public get stirred up  
6       about? I would say that the typical issues  
7       involve water, air quality, and public health.  
8       And that runs across all the projects. When you  
9       get into the more urban and small communities, you  
10      -- you can add on visual and noise. And  
11      oftentimes, in the urban environment, there is an  
12      existing sense on the part of the public due to  
13      already existing toxic conditions that they would  
14      describe. Already, there are pollution issues,  
15      and then you would add on the overlay of  
16      environmental justice.

17             I believe that intervenor comments have  
18      improved projects. And although I've not seen an  
19      instance where somebody came to a single meeting  
20      and offered a single public comment, that that  
21      particular comment changed the direction of a  
22      project.

23             But in a very broad brush, I would say  
24      intervenors have protected the water supplies by  
25      bringing about a voluntary change from a

1       technology to wet, and in another case, from  
2       wet/dry cooling. They have been -- brought about  
3       a voluntary reorientation of the footprint of a  
4       project to improve the visuals in the community.  
5       They have obtained an air monitoring station to  
6       better monitor the ambient air in their community.  
7       Interested agencies who have participated  
8       frequently end up with better fire service, better  
9       emergency service equipment.

10               And generally, I'd say that the public  
11       who does come and participate, in most cases  
12       leaves the case with some sense of satisfaction,  
13       having participated.

14               Who typically participates? Well,  
15       oftentimes they are just casual neighbors who  
16       heard something about it, and so they drop by.  
17       Sometimes people show up and we'll be talking to  
18       them, and we find out they just want a job.  
19       Oftentimes, there might be a lay organization,  
20       like the Sierra Club or the Audubon Society.  
21       Sometimes the neighborhood group exists, and  
22       sometimes neighborhood groups are formed.

23               We have environmental watchdog groups  
24       that come and participate. And we have community  
25       action groups, like Communities for a Better



1 Environment or SAGE.

2 Local agencies have participated, too,  
3 and oftentimes, because the local agency has  
4 worked very closely with the Staff on other  
5 issues, they don't necessarily feel a need to  
6 intervene. But sometimes cities have intervened,  
7 and sometimes even neighboring air districts have  
8 intervened.

9 We've had a state agency intervene, the  
10 Department of Parks and Recreation. And we also  
11 have frequently other applicants that have used  
12 the intervention process to participate in a case.

13 Some thoughts about -- about making the  
14 public's participation more meaningful. I think  
15 probably one of the unusual parts of our  
16 regulation is how our noticing criteria actually  
17 works in practice. We are required to send a  
18 legal notice to homeowners along a 500 foot  
19 corridor of lineals, and within a thousand feet of  
20 a project. That produces a list, in one of our  
21 more contentious cases, of nearly 52 people, and  
22 one of our least contentious cases, a mailing list  
23 of 4,000. So it seems that the mere application  
24 of the rule, without some way to refine that so  
25 that there is, in fact, a better mail list, if

1       there could be a better mail list, would improve  
2       the public's notice.

3               I do believe that that is probably the  
4       most frequent comment by public participants, is I  
5       didn't know about this. And in some cases, their  
6       reasons for saying I didn't know are real obvious.  
7       The notice, the actual notice area, if it's an  
8       urban site and there is industrial sites around,  
9       there are no homeowners adjacent to that site, and  
10      they -- they only can find out by other means.

11             The Public Advisor is undertaking a  
12      community library project. The Energy Commission  
13      must send a copy of the Application for  
14      Certification to five locations, regardless. One  
15      is Eureka, one is Fresno, one is San Francisco,  
16      one is Sacramento, and one in our library here.  
17      And in a local community, we have anywhere from  
18      one to three local libraries that we mail to.

19             In trying to turn the community to a  
20      resource where they can learn about the project,  
21      the local library can be a wonderful resource.  
22      And now that many libraries have the Internet, we  
23      in the Public Advisor's office are hoping to make  
24      a liaison with a library employee to whom we can  
25      turn to our Web site and give them the skills to

1 walk people through how to find information on the  
2 Web.

3 PRESIDING MEMBER LAURIE: And you're  
4 talking about on a case by case basis.

5 PUBLIC ADVISOR MENDONCA: On a case by  
6 case basis. Yes.

7 I've talked about and looked into  
8 producing various types of videos that would be of  
9 assistance in explaining our process. It is super  
10 expensive, but my new hire comes out of the TV  
11 industry, and so I think I have a lay resource  
12 that we're going to be able to capitalize on and  
13 come up with some tools that will be very  
14 affordable for us to explain the process.

15 One thing that the Public Advisor did is  
16 we have no real mandate to translate documents,  
17 but on a case by case basis, I have provided as  
18 many times as possible documents in English and  
19 Spanish. In one case, I received a request for  
20 reproducing the PMPD and the Proposed Decision in  
21 Spanish. When we tried to have one page  
22 translated, it was like \$400 a page. It was super  
23 expensive. So what the Public Advisor did is I  
24 went and I bought a program, Translator, and  
25 learned it, and overnight expressed it to the

1 person requesting the translation, and they were  
2 able to do their own -- we gave them a word  
3 document and they were able to do their own  
4 translation and were perfectly pleased with that.

5 Earlier today there was a statement that  
6 too many meetings is a drain on the system. And I  
7 think that you have to really go back and look at  
8 the process before you could ever believe that  
9 that is accurate. We tend to have few meetings in  
10 cases where there are few changes. But when you  
11 get to a complicated, complex issue, and the  
12 project changes, there is a need to go back and  
13 explain the change. We have more meetings.

14 So I have not experienced -- sure,  
15 people get tired, but most people would err, if  
16 given a choice, on having an opportunity to know  
17 about it than to have the decision made without  
18 their knowing, or to feel they didn't get to  
19 participate.

20 So perhaps meeting agendas, where the  
21 timing of the topic assists people with the use of  
22 their time. We often have very informal, show up.  
23 I think one of the better meetings that I saw in a  
24 little community in northern California, which was  
25 during the day, which is often a hard time for the

1 public but did have public participants, allowed  
2 the public to come forward right at the beginning  
3 of the workshop, make their comments. They were  
4 done in 15 minutes and off to their job. And so  
5 they weren't required to wait until the very,  
6 very, very, very, very end when oftentimes there's  
7 only 15 minutes left, and instead of feeling that  
8 they are fresh and so forth, they are more  
9 confused, having listened to a lot of technical  
10 information. That's just a suggestion.

11 That's kind of the end of my prepared  
12 remarks, other than I would want to summarize.  
13 The public's participation is hard to categorize.  
14 We had really strong interest in a community in  
15 Morro Bay, where the citizens came out and lent  
16 their support in a public referendum in support of  
17 the project. We've had just the opposite result  
18 in Nueva Azalea.

19 So I don't think that there is a way to  
20 categorize how the public is going to react to the  
21 concept of an energy proposal. I think you just  
22 have to know that, like politics, it's a policy  
23 making process, and there's apt to be some sausage  
24 making along the way.

25 Thank you.

1                   PRESIDING MEMBER LAURIE: Great. Thank  
2                   you, Roberta, very much.

3                   I'd like to go to Ted James, from Kern.  
4                   Good afternoon, Mr. James. Thank you for joining  
5                   us.

6                   MR. JAMES: Good afternoon. It's a  
7                   pleasure to be up here, Commissioners.

8                   PRESIDING MEMBER LAURIE: Can you  
9                   provide a little background as to what you're  
10                  doing for Kern, and how you happen to be here  
11                  today.

12                 MR. JAMES: Well, I think you  
13                 Commissioners are probably aware, I probably have  
14                 the most experience with your Staff at dealing  
15                 with siting issues related to power plants. Right  
16                 now, we have five facilities, large facilities,  
17                 that are in various stages of either development  
18                 or permitting. There's another one possibly on  
19                 the way.

20                 Interestingly, I'm going to bring you a  
21                 little bit different perspective, but I am also  
22                 going to give you some constructive criticism on  
23                 how we can improve the process.

24                 Number one, I think we have a very good  
25                 relationship with your Staff. And we've had good

1 communication as we've gone through and addressed  
2 issues.

3 Our area maybe is unique from others, in  
4 that, as you're probably aware, we have a very  
5 strong economy based on oil and gas production,  
6 and we have a lot of cogeneration activity. And  
7 when you look at the physical plant, there isn't a  
8 whole lot different between that and power plants.  
9 And a lot of the power plants have been sited in  
10 the oil pack, rather than closer in to urban  
11 areas. We are fortunate to have large rural,  
12 undeveloped areas, and the majority of these power  
13 plants have been located away from urbanization.

14 So, have we had the conflicts of this --  
15 this urban power plant issue that maybe some other  
16 areas have had? No. Could it potentially happen  
17 in the future? Yes, it could.

18 I share the comments of the League  
19 earlier about the importance of -- of, you know,  
20 of the local government and their ability to  
21 manage their own land use affairs. We certainly  
22 acknowledge the role of the state in these large  
23 power plant siting issues. Local control is, with  
24 counties, as well as with cities, is an important  
25 issue.

1                   But I'm here today not to go into that  
2                   issue. I want to talk a little bit more about a  
3                   partnership approach and how we can provide a  
4                   better forum for addressing public input, and then  
5                   the agency input into the process.

6                   I want to talk first -- and I've got  
7                   about five points I'm going to focus on -- I want  
8                   to talk first about local government staffing.  
9                   Recent efforts by the administration and several  
10                  pieces of legislation are working their way  
11                  through the system to try to expedite the process  
12                  for siting power plants. And that's all well and  
13                  good, and it's an important state need. And --  
14                  and we're certainly supportive of that.

15                  However, it can backfire if the public  
16                  gets the perception that corners are being cut.  
17                  And that's -- that's a cautionary note, as we go  
18                  through this difficult effort of trying to site  
19                  additional facilities to address our power needs.

20                  My dilemma, because I play a very  
21                  important role in working with your Staff in  
22                  providing local input, one of my themes today is  
23                  there's not enough local focus in addressing local  
24                  issues in your AFC documents. Part of it is  
25                  applicants come in a lot of times, their



1 consultants come in with boilerplate wording, and  
2 then we have to go back and say no, you've got to  
3 deal with the local issues. And just working with  
4 Staff in doing that.

5 I think there needs to --

6 PRESIDING MEMBER LAURIE: And are those  
7 local issues, those issues normally identified  
8 through a CEQA process?

9 MR. JAMES: Yes, they are. Yes, they  
10 are. And our effort is to make sure that they are  
11 sensitive to local zoning, or general plan  
12 programs, or the knowledge we have of local issues  
13 that have come up before during hearing processes.

14 I deal with a variety of different  
15 issues just as complex as power plants. Hazardous  
16 waste facilities, cogen facilities, power plants  
17 smaller than 50 megawatts, and a variety of other  
18 issues. So a lot of the things that come up in  
19 the power plant siting arena are issues that I  
20 deal with on a regular basis.

21 Getting the CEC Staff to tap into local  
22 government's knowledge of those issues and who the  
23 special interest groups are, and a lot of things  
24 that we've already gone through before, I think is  
25 a very important thing. Getting local government

1       involved at the earliest stages of dealing with  
2       applicants on a preliminary level can maybe help  
3       focus applicants on the issues that need to be  
4       addressed.

5               There were comments earlier about  
6       getting the state staff to better understand local  
7       government processes. And I strongly agree with  
8       that. There need to be forums to educate the  
9       state staff. Conversely, we need to have a good  
10      understanding of the state process, as well. I  
11      view this as being a partnership approach, and I  
12      strongly believe if we work at it in a partnership  
13      way, we don't have to have a conflict between --  
14      between local control and the state process. But  
15      the state, you know, is up in Sacramento. They're  
16      not in Kern County. And yes, they do come down  
17      and hold meetings, and try to address issues.

18             But tapping into the knowledge of local  
19      government I think is very important for the Staff  
20      and for the applicants, as well. And that's one  
21      of my messages, because when we get the documents  
22      and review them, and we occasionally will have  
23      some preliminary meetings with the Staff or with  
24      the applicant, we still have to go through and  
25      spend time addressing this issue of, you know, you

1       haven't focused on -- on these local issues. And  
2       address them in your document to assure that it's  
3       adequate, and we've addressed these issues, and I  
4       think it's going to save everybody in the long  
5       run, down the road.

6               Now, one thing I am concerned about is  
7       staffing. As I said before, I have multiple  
8       permits that I'm dealing with and trying to help  
9       out CEC Staff with. I do get reimbursement. I  
10      have a time and materials agreement with each  
11      applicant that comes along. My dilemma is I am a  
12      small planning agency. I don't have the resources  
13      to have staff specifically focused on energy  
14      siting issues.

15             PRESIDING MEMBER LAURIE: Are you in the  
16      Kern County Planning Department?

17             MR. JAMES: Yes, I'm the Kern County  
18      Planning Director.

19             PRESIDING MEMBER LAURIE: Right. Thank  
20      you.

21             MR. JAMES: And when we have one of  
22      these projects come along, and especially if we're  
23      now in an environment of reduced processing times,  
24      I have to take a staff person, drop them from  
25      whatever they're working on, which is just

1       important for that applicant, and assign them to  
2       this project.

3               My suggestion, it was brought up  
4       earlier, and I want to emphasize this point, is  
5       the provision of grants by the state to local  
6       governments, especially those that are processing  
7       multiple projects, would really help us. For me  
8       to have staff trained and ready to go on projects,  
9       based on this grant money, would, I truly believe,  
10      help the process.

11             Again, we're the local eyes and ears for  
12      the Energy Commission in helping make their  
13      documents attuned to local issues.

14             Another thing I want to point out, and I  
15      guess I'll call the topic of this, timing of local  
16      government involvement. And I -- I touched on it  
17      a little bit before. I'm always running into a  
18      battle working with applicants to tailor make the  
19      documents to fit our situation, and not be  
20      boilerplate. And wherever we can be involved  
21      earlier in the process, at the first stages,  
22      that's important.

23             Providing funding for us to come up and  
24      meet with your Staff and the applicant as you go  
25      through your early meetings with them, I think

1       that's an important partnership approach that we  
2       need to have.

3               Staff education, I touched on. We need  
4       to have state staff and local staff better  
5       understand each other's roles. And I think we can  
6       work better together by addressing that issue.

7               Public participation. Utilize the local  
8       agency input when developing the strategies for  
9       public participation. Again, I deal with very  
10      controversial hazardous waste facilities, a  
11      variety of different residential, commercial,  
12      industrial projects. Large complicated programs  
13      similar to this. Other -- other counties in the  
14      state do the same thing. Tap in to us. Use us.  
15      We know all the special interest groups in the  
16      area. We can give you strategies for how to  
17      conduct the forums, whether or not there are too  
18      many forums or not, because of our experience in  
19      doing that. We're not trying to intrude into the  
20      state process. But we have a lot of experience  
21      that needs to be tapped into by your state staff.

22              Delegating environmental document  
23      preparation. I offer this as a suggestion. Do I  
24      want more work? No, but it might be something you  
25      might want to consider in the way of future

1       legislation. Why not authorize a local equivalent  
2       certification program that delegates to the county  
3       the authority for certification of thermal power  
4       plants similar to what's being done with  
5       geothermal plants. It's something to explore.

6               We are geared up to do CEQA documents,  
7       and work closely to assure that issues are  
8       addressed. My one dilemma in that arena is I'm  
9       also concerned about potential for litigation, and  
10      as long as the applicant or the state, or somebody  
11      indemnifies me, you know, if we could assist in  
12      facilitating that process, I think that's a role  
13      that maybe should be explored.

14             I'm a strong advocate, government is  
15      most effective when it's closest to the people  
16      that are being served. It's hard at the state  
17      level to address local issues. And my message is,  
18      when local government can help address these  
19      issues on behalf of the state, and address their  
20      issues, and work closer to those people being  
21      governed, sometimes it's more responsive process.

22             MS. TOWNSEND-SMITH: So you're saying  
23      you would want to take on a whole application for  
24      a project, and not just maybe traffic, or look at  
25      public health, or maybe look at the air quality?

1       You would want to take over a whole application?

2               MR. JAMES:  I -- I think if we -- if we  
3       didn't have the staffing issues, and it is  
4       possible, it would provide us a greater  
5       opportunity of, you know, providing local input  
6       into that process.

7               And when I say that, it's not just  
8       taking it over from the state.  It's working in  
9       partnership on this issue.  And -- and we're both  
10      working together to make sure that our issues are  
11      being adequately addressed.

12              A couple of other things I want to point  
13      out that are of important concerns to the locals.  
14      It was mentioned earlier, compatibility of  
15      neighboring land uses.  The things that come up  
16      after -- after the state goes through their  
17      process that we're always faced with, there are  
18      access issues.  Believe it or not, some of these  
19      sites don't have public access, and we're always  
20      having to deal with that issue.  And if the state  
21      could focus on that earlier on, it could help us  
22      in addressing that issue.

23              Providing accurate information, as I  
24      said, on the local programs we have.

25              PRESIDING MEMBER LAURIE:  We had one

1 project, Mr. James, that did not have access even  
2 when the case was completed.

3 MR. JAMES: Was that the Pastoria, or --  
4 which one?

5 PRESIDING MEMBER LAURIE: No. No, that  
6 was the McKittrick case. Yeah. They still had to  
7 work on it after the certification was granted.  
8 Not a good negotiating position to be in.

9 MR. JAMES: I -- I would agree. I would  
10 agree.

11 A couple other points I just want to  
12 conclude with are, again, what we've noticed in  
13 the CEC process. Sometimes the specialists, and I  
14 enjoyed the discussion earlier about the people  
15 that are responsible for supervising the program  
16 not being able to address coordination with the  
17 individual specialists, and I just -- I can't  
18 fathom that. I couldn't fathom in my own agency  
19 not being able to supervise those people.

20 And here's my one observation, and I'll  
21 give you one good example of it. You have  
22 specialists that deal with endangered species  
23 issues. I have endangered species issues down in  
24 the county. I've got U.S. Fish and Wildlife  
25 Service and Fish and Game doing the same thing.



1       You have redundancy in the CEC process, and we  
2       need to get rid of that and not spend so much time  
3       having Staff working on that. That is the  
4       responsibility of other agencies.

5               And I -- I would just leave that one  
6       example. There are others. But I think that is  
7       one area we need to address because, again, your  
8       environmental document is the forum to address the  
9       agencies' issues. And I've seen situations where  
10      your Staff may be opposed with -- with the Fish  
11      and Game or Fish and Wildlife staff in terms of  
12      philosophy, and again, how do we get all the staff  
13      on the same page.

14             Again, I have the same problem in my  
15      agency, and I always have to strive to get  
16      everybody on the same page and be consistent. But  
17      we all need to strive to do that, to avoid  
18      redundancy in issues related to that.

19             Just a couple other points I want to  
20      just conclude with. Again, I think we have a  
21      process right now where we've had a good  
22      relationship in working with your Staff. My  
23      themes are we need to be involved earlier in that  
24      process. We need to take the redundancy out of  
25      the review process where we've got multiple people

1       trying to address issues. And I think there's  
2       confusion related to that.

3               You need -- your Staff needs to help us  
4       in making sure that local Kern County or other  
5       local county issues are being addressed in the  
6       process, as well. And there needs to be  
7       sensitivity to the local control issue. It hasn't  
8       been an issue with us because they've been out in  
9       the outlying areas. But as soon as I get a big  
10      plant in -- near urban areas, you'll probably hear  
11      me having the same comments that the League of  
12      California Cities had.

13              PRESIDING MEMBER LAURIE: Excellent,  
14      Ted. Thank you very much.

15              Question for Rick and/or Kae.

16              In your staffing, do you have any folks  
17      who have come from local planning agencies?

18              MR. BUELL: Yes.

19              PRESIDING MEMBER LAURIE: And are they  
20      spread out through the division, or are they --  
21      are they assigned to specified kinds of work, do  
22      you know?

23              MR. BUELL: Some of them are employed in  
24      our land use or community resources unit. We have  
25      some that are in the planning, so they're

1 throughout the division. They aren't specifically  
2 -- one or more are now project managers.

3 PRESIDING MEMBER LAURIE: Okay.

4 MR. JAMES: Commissioner --

5 PRESIDING MEMBER LAURIE: Sir.

6 MR. JAMES: -- one other point I want to  
7 emphasize. We've been trying to do things to help  
8 your siting process. One good example, we've been  
9 for the last several years developing our Valley  
10 Floor Habitat Conservation Plan. This is designed  
11 to provide cookbook mitigation for an applicant to  
12 help address your siting process, as well as our  
13 local projects. Where local government can get  
14 involved in coming up with cookbook mitigation to  
15 address state and federal endangered species laws,  
16 or other laws, this is where we need to work on.

17 You can help us with -- with funding,  
18 potentially. We can help come up with cookbook  
19 mitigation programs that would help facilitate the  
20 environmental review process. And our Valley  
21 Floor program, once it's adopted, will do that for  
22 power plant projects.

23 MR. BUELL: I just wanted to add that we  
24 have a workshop scheduled for the 27th of this  
25 month that will deal with the timing of federal

1 permits, and that's exactly one of the topics that  
2 we hope to breach, is working on the federal  
3 permits and trying to reduce the duplication of  
4 work, and to come up with a program mitigation  
5 kind of a plan.

6 PRESIDING MEMBER LAURIE: Thank you, Mr.  
7 James, very much.

8 Ellie, yes.

9 MS. TOWNSEND-SMITH: I was curious. Are  
10 there many other counties looking at cookbook  
11 mitigation? This is the first time I've heard of  
12 it.

13 MR. JAMES: I know in the desert there's  
14 a West Mojave program that's been a long time  
15 under development, and it's multi-county, and  
16 federal agencies, as well as state agency are  
17 involved in trying to come up with one mitigation  
18 or conservation strategy to address endangered  
19 species issues.

20 You know, those are the types of things  
21 we need to come up with to help facilitate project  
22 applicants, is can we address this mitigation as a  
23 whole prior to a project applicant coming forward.  
24 That way, he's got certainty in the process, he  
25 knows what it's going to cost to mitigate, and he

1       can do, you know, pay his money or provide the  
2       mitigation, and move on down the road. Those are  
3       the things that will help expedite the process.

4               MS. TOWNSEND-SMITH: Thank you.

5               PRESIDING MEMBER LAURIE: Again, thank  
6       you very much. You folks have been busy down  
7       there with us, and you really have been doing an  
8       outstanding job. We appreciate your efforts.

9               Kathleen Livermore, City of Fremont.

10              Welcome, Ms. Livermore. Thank you for  
11       joining us this afternoon. And could you give us  
12       a brief introduction of your efforts and your  
13       position in the city, and how you come about being  
14       here today.

15              MS. LIVERMORE: Thank you very much.

16       Yes, I will.

17              Is this microphone -- it doesn't sound  
18       like it.

19              PRESIDING MEMBER LAURIE: Yeah, but you  
20       have to get really close.

21              MS. LIVERMORE: How about this? Does  
22       that sound better? I don't think I pushed it on.

23              PRESIDING MEMBER LAURIE: Yes. Thank  
24       you.

25              MS. LIVERMORE: Thank you for inviting

1 me today to -- for this important panel  
2 discussion.

3 Again, my name is Kathleen Livermore,  
4 I'm Senior Planner with long range planning for  
5 the City of Fremont. And I've actually been with  
6 the city for about nine months, and I have 15  
7 years of municipal city government experience in  
8 the Bay Area, so I don't have quite the same kind  
9 of number of contacts that -- that Ted James has.

10 But in the short nine months that I've  
11 been with Fremont, there's been actually three  
12 projects that connect to power, and I'd like to go  
13 over them briefly in the context of public  
14 participation.

15 City government has several interests in  
16 the siting of power plants in their communities.  
17 One important interest is the city's obligation to  
18 keep residents and businesses informed of various  
19 proposals by power companies that affect their  
20 communities. The idea here is to have an informed  
21 citizenry with access to clearly written and  
22 unbiased information. Another interest is  
23 recognizing the need for uninterrupted power to  
24 residents and businesses. I'm going to talk  
25 mostly about the first issue and touch briefly on

1 the second.

2 The first case I want to talk about is a  
3 transmission line project in the City of Fremont  
4 and San Jose. It involved a 7.3 mile long  
5 transmission line from the southern portion of  
6 Fremont through San Jose.

7 PRESIDING MEMBER LAURIE: And is this  
8 current? When -- when is this?

9 MS. LIVERMORE: Yeah. I can specify  
10 that I was advised to maybe not mention names and  
11 companies.

12 PRESIDING MEMBER LAURIE: Yes.

13 MS. LIVERMORE: So it is still current.  
14 This one is still current.

15 The city's concern is the placement of  
16 -- of more overhead transmission lines in Fremont.  
17 We currently have 38 miles of transmission lines.  
18 And these transmission lines are proposed to be  
19 immediately adjacent to Pacific Commons, a  
20 development of 8.3 million square feet of  
21 industrial, office, commercial and a hotel  
22 conference center that was just recently -- on  
23 June of 2000 it was approved. The site of the  
24 hotel and conference center is immediately  
25 adjacent to the beginning of the transmission

1 line.

2 The city's concern here is obvious. I'm  
3 not going to go into those details. But I did  
4 want to stress the city's concern about the public  
5 notification process. Once we understood the  
6 nature of the proposal, the transmission proposal,  
7 the city's planning and economic development  
8 divisions teamed up to get word out to the  
9 economic community, the existing and future  
10 business operators there.

11 The -- the information that we got from  
12 the environmental consultant was really hard to  
13 understand. And in my reading of it, I -- I --  
14 and I went to the -- the public -- the first  
15 public hearing process when they explained it, it  
16 was -- it was just like wading through details to  
17 figure out what it really meant. And when I  
18 understood it, I said my goodness, this really is  
19 going to have a lot of -- a big impact on the  
20 businesses here, I wonder if they even -- even  
21 know.

22 And so we did get the word out. We sent  
23 faxes, the economic development division has  
24 access to all the business operators in these  
25 business parks that we -- that would be affected,



1       and we got the word out. And some of these  
2       businesses showed up for the CPUC hearings. We  
3       had extensive comments, and actually in this  
4       particular EIR process there was, following the --  
5       the draft EIR, there was actually a supplemental  
6       EIR that had to be released, as opposed to a final  
7       EIR, because there were so many issues that --  
8       that we had brought up, and some of the other  
9       communities that commented, had brought up, that  
10      needed to be addressed.

11               That is still pending. And this is an  
12      example of how a process could be made better --  
13      better. At least now, part of the process is to  
14      have on equal footing a overhead or an underground  
15      alternative for some portion of the -- of the  
16      transmission line that would be in Fremont.

17               Another case was a 600 megawatt proposal  
18      in the -- in the Bay Area. Two of the four  
19      alternative sites identified in the alternatives  
20      -- I'm sorry, in the environmental document were  
21      sites in Fremont. And this was an awkward  
22      situation for the city. The analysis that was  
23      done on the alternative sites did not clearly or  
24      accurately explain the -- the potential  
25      constraints of those sites. But the main emphasis

1       for commenting on an environmental document is  
2       where the project itself, and not the  
3       alternatives. And even though there would be  
4       things that we would say, as of this time the City  
5       of Fremont has not directly entered the debate on  
6       this issue.

7               Another example is Calpine Newark  
8       Substation proposal for the temporary generators.  
9       That is some months ago, that was later withdrawn.  
10      This is actually a good example of cooperation,  
11      and I wanted to embarrass Eileen Allen, but she's  
12      in another meeting so I'm going to have to  
13      embarrass her in her absence.

14             This is really an example of good  
15      cooperation, I felt. We received a notice and  
16      phone calls from the California Energy Commission  
17      Staff, Eileen Allen. We were working closely to  
18      set up a community workshop at a time and place  
19      that would be convenient for the public to  
20      participate, and we were also in the process of  
21      developing a mailing list of interested citizens.

22             And this is an another point that I want  
23      to emphasize. I see my job as a planner as a  
24      conduit for information to the public. We have a  
25      lot of -- a lot of proposals that come before us.

1       We have interested party lists that we -- that we  
2       know certain key people in the community that --  
3       that are interested in projects and have -- have  
4       had, you know, written record of their interest  
5       that we have them on our mailing list. This is  
6       members of the environmental community, as well as  
7       members of the business community, League of Women  
8       Voters, things like that.

9               And I see it as my obligation to make  
10       sure that the public is informed about these  
11       issues, and that's a great reason for the Energy  
12       Staff to get in touch with local agencies and try  
13       to get -- get ahold of those lists of interested  
14       parties.

15              A simple ad in the newspaper may meet  
16       the legal notice obligation, but will probably not  
17       reach the same network of individuals that are  
18       interested in that community that can then get the  
19       word out about -- about the various proposals  
20       involved.

21              It was at this phase of cooperation that  
22       the Calpine -- that Calpine announced that they  
23       would be withdrawing their application for Newark  
24       and the other sites.

25              Another point I'd like to make about the

1 Calpine Newark Substation example is that  
2 interdepartmental cooperation, because we were  
3 able to get the information fairly early on, we  
4 were able to notify the fire, hazardous materials  
5 division and engineering division to let them know  
6 about the proposal, and try and get their feedback  
7 initially. And I believe I even came and spoke  
8 with you as part of that hearing process to  
9 explain what our concerns would be, and the types  
10 of issues that we would want to have addressed if  
11 that proposal were to go forward.

12 And in that case, it was actually the  
13 City of Newark that was very concerned about the  
14 project, as an adjacent community.

15 Again, just a comment to make about  
16 public participation. It's really the -- the  
17 power generator's opportunity to make a pitch to  
18 the community in an up front manner about what the  
19 real issues are, and not have misperceptions to  
20 start out with. And -- and I think having a  
21 proactive approach to that information  
22 dissemination is preferable to, you know, coming  
23 in later on and trying to explain what's involved.

24 Finally, I'd just like to briefly  
25 mention the City of Fremont's concern about

1       uninterrupted power supply for the residents and  
2       businesses in Fremont. On Monday, March 5th, the  
3       city council had a study session on energy issues  
4       to look at a number of opportunities that might be  
5       available to them, and to provide staff direction  
6       about how the city should concentrate resources  
7       and take advantage of a number of options  
8       available, including municipalization of energy.

9               To that end, at their regularly  
10       scheduled meeting on March 6th, the city council  
11       directed staff to set up an energy task force to  
12       further study these issues.

13              And that's -- that concludes my  
14       comments.

15              PRESIDING MEMBER LAURIE: Are you going  
16       to be communicating or seeking information from  
17       the Energy Commission or other energy entities in  
18       regards to helping out that task force?

19              MS. LIVERMORE: I'd be happy to write  
20       down a name and -- or a couple of names, and give  
21       that information to the deputy city manager, who's  
22       forming that task force. That'd be a great  
23       opportunity for us.

24              PRESIDING MEMBER LAURIE: Why don't you  
25       speak with Mr. Buell, and he'll give you some

1 proper contact names, whether it's the Deputy  
2 Director of the Licensing Division or somebody  
3 else. But we're certainly in a position of  
4 providing assistance to local governments, as far  
5 as their education efforts.

6 MS. LIVERMORE: Yes, it's -- it's only  
7 been nine months that I've been in Fremont, but  
8 there's been a lot of activity with energy --

9 PRESIDING MEMBER LAURIE: Well, we're --

10 MS. LIVERMORE: -- in that short time.

11 PRESIDING MEMBER LAURIE: -- we're  
12 pleased that you're happy. So thank you, Ms.  
13 Livermore, very much.

14 MS. LIVERMORE: Thank you.

15 PRESIDING MEMBER LAURIE: Mr. Ellison,  
16 good afternoon, sir.

17 MR. ELLISON: Good afternoon.

18 I do have some overheads, but I think,  
19 unless the -- unless Commissioner Laurie, you're  
20 particularly interested in seeing them, I'll just  
21 -- I'll just stick with the informality of the  
22 process.

23 PRESIDING MEMBER LAURIE: I don't know.

24 Do you have any mad attack dogs, or anything --

25 (Laughter.)

1                   PRESIDING MEMBER LAURIE: For the  
2                   record, can you provide a little bit of your  
3                   background, please.

4                   MR. ELLISON: Certainly. In fact, I --  
5                   I appreciate your asking that question, because I  
6                   did want to emphasize where my comments are going  
7                   to come from today, first and foremost.

8                   As you know, Commissioner, in recent  
9                   history my role here at the Commission has been as  
10                  the representative of a number of power plant  
11                  applicants, specifically the Calpine projects and  
12                  the Duke project.

13                  I am not here today to speak for any  
14                  applicant, and I am not here to speak for any of  
15                  the trade associations that I represent, or for  
16                  any of the renewable trade associations that I  
17                  represent, or -- or other clients that I  
18                  represent. The comments that I'm presenting are  
19                  -- are my own.

20                  The -- and from that background, let me  
21                  take just a moment and say I -- I began my legal  
22                  career here at the Energy Commission, I regret to  
23                  say clear back in 1978, an indication of my age.

24                  PRESIDING MEMBER LAURIE: 1978?

25                  MR. ELLISON: Yes. And I started here

1 as a Staff Counsel. And I represented the Staff  
2 in power plant siting cases. And then was  
3 privileged to work for Commissioner Rusty  
4 Schweickart, when he was Chair of the Commission,  
5 as his advisor, and sat up there on power plant  
6 siting cases, and worked on the Commissioner's  
7 side of these issues.

8 Subsequent to that, I have represented  
9 intervenors, including local governments, in power  
10 plant siting cases. And now, of course, recently  
11 we've been representing applicants. So my  
12 observations over the years come from all of that  
13 background.

14 And perhaps the -- in the course of that  
15 history, I have had two epiphanies, if you will,  
16 with respect to this process. And I say the word  
17 epiphanies, because I was involved in some of the  
18 creation of the process. I certainly wasn't the  
19 creator of it, by any means, but I participated,  
20 for example, in the drafting of the Commission's  
21 first CEQA regulations, and I do know a little bit  
22 about what was in the minds of the many people who  
23 were involved in that at the time.

24 And what was in our minds at the time,  
25 in drafting this process, was that we wanted to



1       achieve -- and I've written them out, I wanted to  
2       make sure I got them right -- but we basically  
3       wanted to achieve four goals in -- in the  
4       Commission's process.

5               First and foremost, we wanted to inform  
6       the decision maker. We wanted the best decision  
7       possible, and we wanted a process that would  
8       provide the best information possible.

9               Secondly, we wanted to provide a fair  
10      opportunity for the public to comment.

11              Third, we wanted to provide a timely  
12      decision.

13              And lastly, and I think the thing that  
14      was most in our minds, was that we wanted to  
15      promote public understanding and acceptance of  
16      whatever decision was rendered at the end. We  
17      very much had in our minds the idea that even if  
18      an applicant or a member of the public did not  
19      prevail at the end of the day, we wanted them to  
20      walk away from this process feeling as though I  
21      didn't win, but I got a fair hearing.

22              The -- and so, in the course of doing  
23      that, there were a lot of provisions that have  
24      been put into the Energy Commission process to  
25      create lots of opportunities for public comment.

1 And I think when you look at the Energy Commission  
2 process, and you compare it to other licensing  
3 processes for power plants or for large industrial  
4 facilities in other states, or in California,  
5 there are several things that distinguish the  
6 Energy Commission process. And I'll just list  
7 some of them.

8 The one stop aspect of the siting  
9 process is obviously somewhat unusual. The  
10 presence of the Public Advisor. The way the  
11 Commission's ex parte rule works, particularly  
12 with respect to its own Staff, having Staff that  
13 do not communicate with the Commissioners outside  
14 of public hearings.

15 The number of workshops and hearings  
16 that the Commission conducts relative to a  
17 standard CEQA process or a local government  
18 process. And -- and the trial-like nature of  
19 those hearings. All are things that I think are  
20 different in -- in many respects than other  
21 agencies that I've practiced in front of and  
22 familiar with.

23 Most of those things I think work well.  
24 And let me stop right here, before I say anything  
25 further. I do have some suggestions about ways

1       that I think the process can be improved. But I  
2       want that -- those suggestions to be understood  
3       against the background. I do not believe this  
4       process is fundamentally broken, at all. It does  
5       fundamentally work. I think the Energy Commission  
6       Staff, relative to other public agency staffs that  
7       I have worked with, has a very high degree of  
8       professionalism. With very few exceptions they  
9       are hard-working, dedicated, intelligent public  
10      servants, and I want to make all of that very  
11      clear.

12               Nonetheless, I do think the process can  
13      be improved in some ways. And to return to the  
14      two epiphanies that I mentioned. The first of  
15      those was when I first represented an applicant in  
16      one of these cases. And the one thing I can say  
17      is that having represented, as I mentioned, having  
18      participated in this process from I think every  
19      vantage point, it looks different from every  
20      single one of those vantage points. And it has  
21      its own set of virtues and vices from every single  
22      one of those vantage points.

23               But the epiphany was it really looks  
24      different from an applicant's vantage point. And  
25      I can talk more about why that is, and I'm just

1       going to stop there and just say it really is  
2       different from that perspective, from what I  
3       thought it looked like. And at that point in the  
4       process, when I first did that, I had been working  
5       with this process for a decade and thought I  
6       understood it very well.

7               But the epiphany that I really want to  
8       talk about, that is most interesting to me,  
9       occurred at the end of Calpine's Sutter  
10      application, which I was intimately involved with.

11             That was a process that, as I think you  
12      know, involved parallel local agency and Energy  
13      Commission reviews, with the county, Sutter  
14      County, making a zoning change for the project and  
15      using its process for that. And with the Energy  
16      Commission conducting what I would describe as a  
17      sort of middle road example of the Energy  
18      Commission process. And by middle road, I mean  
19      there are examples of cases that I think were --  
20      were more complicated and involved more process  
21      and more intervenors, and there have been examples  
22      of cases that were less complicated and involved  
23      less intervenors. So this was, I think, a fairly  
24      good example of the kind of mainstream Energy  
25      Commission case.

1           The epiphany occurred to me at the end  
2       of the case, when all was said and done. I had  
3       spent so much time with the intervenors in that  
4       case that we knew each other quite well. And at  
5       the County Board of Supervisors vote, which was  
6       very heavily attended, very controversial, in  
7       which they voted to make the change that allowed  
8       the project to go forward, at the end of that, I  
9       asked several of the most active opponents of the  
10      project which process they liked better, and why.

11           Every single one of them said to me that  
12      they liked the county process better. And I found  
13      that very interesting, because if you step back  
14      and you look objectively, they had many more  
15      opportunities to comment and much more opportunity  
16      to participate in the Energy Commission process  
17      than they did in the county process.

18           The county conducted I think two  
19      evenings of planning commission hearings, and one  
20      evening of -- of hearing in front of the board.  
21      The hearings did not involve any cross examination  
22      or -- or that sort of thing. As a local land use  
23      attorney in your prior life, I think you know very  
24      well what -- how that process works. So there was  
25      no opportunity to cross examine county staff or

1 anything of that nature, as there would be in the  
2 Energy Commission process.

3 Nonetheless, they were not equivocal.  
4 And furthermore, that -- that project -- I don't  
5 want to single out that project as anything more  
6 than an example, but that project ended up being  
7 delayed significantly by subsequent administrative  
8 appeals at the federal level. So the process  
9 really didn't pass the test of avoiding litigation  
10 very well, and that sort of thing.

11 And all of that kind of caused me to  
12 step back and re-ask the question that I had been  
13 asking myself back in 1978, of how do you  
14 structure a process that the public can  
15 understand, and that they feel gives them a fair  
16 hearing. And a couple of things came out of my  
17 thought process on that.

18 One observation, and in the interest of  
19 time I'm just going to kind of cut to these  
20 observations. One observation that occurred to me  
21 was the Energy Commission process, from the  
22 perspective of a lay member of the public,  
23 requires an enormous investment of time. If  
24 you're really going to participate in all the  
25 workshops and all the hearings, and respond to all

1 the opportunities for submission of comments, it's  
2 a big job. As -- as you know, there are people in  
3 some contested proceedings who are bringing their  
4 children in, because they don't have babysitters,  
5 and who are, you know, doing that -- that sort of  
6 thing.

7 PRESIDING MEMBER LAURIE: Children that  
8 they didn't have at the initiation of the --

9 (Laughter.)

10 MR. ELLISON: That's right. That's  
11 pretty unusual. I mean, if you look at local  
12 licensing processes, that level of effort is not  
13 demanded of the public for them to have a  
14 meaningful opportunity to comment, in most other  
15 cases. We have -- we, meaning Energy Commission  
16 alumni, people that feel wedded to this process,  
17 have always felt the Energy Commission process was  
18 better because of all that opportunity.

19 But one of the epiphanies that occurred  
20 to me was that in fact, people -- the process  
21 demands so much from them in that way that at the  
22 end of the day, if they don't prevail, they, in  
23 many ways, I think, feel more aggrieved than they  
24 would have in -- in a more typical process.  
25 They're certainly much more invested in their

1       opposition, assuming they are opponents, than they  
2       would have been typically. In that sense, I think  
3       the process actually promotes continued  
4       litigation, rather than deterring it.

5               The -- the other thing that occurred to  
6       me is that the process, and again, I hold myself  
7       at least somewhat responsible for this. As a --  
8       as a young lawyer, when we were doing this, we  
9       approached it as lawyers approach these issues,  
10      with a lot of concerns about due process and  
11      adjudicatory procedures. One of the things, in  
12      discussing with the Sutter intervenors and -- and  
13      subsequently with other intervenors in other  
14      cases, that -- that they have told me that they  
15      don't like, is they feel that they are required to  
16      compete with professional attorneys in a very  
17      trial-like setting.

18             I think there's some merit to that  
19      concern. There are certainly situations where  
20      cross examination and those sorts of techniques do  
21      provide more information to the Commission, and I  
22      think it's important that the Commission have the  
23      discretion, where the issues justify it, to use  
24      those procedures. But to use them routinely on  
25      every issue, and to demand of the public that they



1       get a quick law school education before they can  
2       participate effectively, or at least give them  
3       that appearance, I think is -- is a problem.

4               It is also a problem from a developer's  
5       perspective, because it slows the process down, I  
6       think, dramatically. So one of the issues that I  
7       have been advocating is that the Energy Commission  
8       look at having more CEQA-like notice and comment  
9       hearings, where -- which the public are more  
10      familiar with, more comfortable with, and I think  
11      gives them an opportunity to stand up, present  
12      their comments in a -- in a more direct way, and  
13      not to have to engage in these kinds of trial-like  
14      procedures.

15             The last observation that I would make  
16      is that one of the important parts of the process  
17      is to educate the public about the impacts of the  
18      project, and about what's going on with it. I  
19      think one of the other reasons that -- that the  
20      intervenors that I've spoken to have had -- and  
21      again, I'm referring primarily to -- to lay  
22      intervenors and opponents of projects, primarily.  
23      But -- as opposed to local government, for  
24      example.

25             One of the reasons that their concerns

1       have not been assuaged, despite a process that was  
2       intended to do that, is that the Commission's  
3       documents, the Staff documents, the Staff  
4       workshops, to some extent the decision itself,  
5       focus upon the negative aspects of the project.  
6       The question that's asked is does the project have  
7       under CEQA a substantial adverse environmental  
8       impact. And we spend enormous amounts of time  
9       talking about that.

10               We tend to talk about the worst case  
11       possibilities, as a way of measuring that. That  
12       can be appropriate if a project, in fact, may  
13       operate 100 percent in the worst case way. But in  
14       some cases, worst case analysis is used as a  
15       substitute for -- for more reasoned expert opinion  
16       by -- by Staff. I think there are some  
17       circumstances, and I could, you know, cite chapter  
18       and verse, I won't -- but there's some  
19       circumstances that I know of where the Staff has  
20       said, you know, I really don't have the perfect  
21       scientific study that tells me the answer to this  
22       question. I'm not comfortable saying my  
23       professional opinion is X, because I don't have  
24       anything behind it other than my professional  
25       opinion.

1                   And so what I'm going to do is I'm going  
2           to -- I'm going to use the worst case, even where  
3           I know, in my professional opinion, it's not the  
4           realistic worst case. And I, as I say, at some  
5           point we can talk about examples of that.

6                   As a result of this, I think the -- the  
7           nature of the process tends to, in some cases,  
8           heighten public concern, or at least not assuage  
9           public concern about projects, because all of the  
10          conversation is about the potential for negative  
11          impacts from the project, often in a worst case  
12          way. There's almost no conversation, there's  
13          some, but very little conversation about the  
14          benefits of the project.

15                  And I hasten to say that developers  
16          don't want to have to, you know, prove a set of  
17          benefits in order to get approved in a merchant  
18          environment, those kinds of things, the risks of  
19          whether the benefits of the project make it --  
20          justify the investment, is -- is a decision whose  
21          risks are visited on the --

22                  PRESIDING MEMBER LAURIE: Well, do you  
23          think the -- in reaching a decision, do you think  
24          the -- do you think the Commission weighs the  
25          benefits versus the burdens before it decides

1       whether or not to approve the project?

2               MR. ELLISON:  I definitely do.  I  
3       definitely do.  I think their -- the Commission's  
4       experience from all of the information sources  
5       that are available to the Commission, does inform  
6       the Commission about the benefits of these  
7       projects to the public.  I'm not concerned here  
8       about the benefits to the developer.

9               The point that I'm making, though, is  
10      that those are often not articulated in the  
11      decision itself, very much.

12              PRESIDING MEMBER LAURIE:  Let me -- let  
13      me follow up my question.  Do you think the  
14      Commission has the discretion to weigh the benefit  
15      against the burden in considering whether or not  
16      to approve a project?

17              MR. ELLISON:  Well, the test that the  
18      Commission is required to apply is that does the  
19      project conform with applicable LORS, and the CEQA  
20      test.  Are there significant adverse impacts.  I  
21      am not suggesting changing that test.

22              So the -- the strict answer, and I think  
23      your question presages that you know this, that --  
24      that the strict answer is that a project that  
25      complies with applicable LORS and does not have

1       adverse environmental impacts, should be licensed,  
2       and that the issue of what are the benefits of it  
3       is largely irrelevant to that.

4               However, having said that, and returning  
5       to my concern about the process educating the  
6       public, and assuaging concerns. That test, if  
7       that's the only thing the Commission applies, does  
8       not really explain to the public what the public  
9       benefits of the project are. And there are public  
10      benefits in these projects.

11             So what -- if I can be clear about this,  
12      I'm not trying to split hairs here. I think the  
13      Commission has the discretion in its decision to  
14      publish what it believes are the reasons for  
15      projects like these going forward, assuming that's  
16      its opinion in a specific case. Recognizing that  
17      the legal threshold for the license may be okay,  
18      you're -- you're in compliance with applicable  
19      LORS, we've looked at that. You meet the CEQA  
20      test, we've looked at that. But in addition to  
21      that, as a matter of public education, here are  
22      some facts that are relevant to the public that  
23      you might want to know.

24             And I think the Commission ought to at  
25      least have a conversation about -- about that

1 issue, and I say that because when you watch the  
2 process unfold from beginning to end, at the  
3 beginning of the process the -- the -- and I know  
4 I'm taking more time than perhaps I should, I'll  
5 try and close this down quickly. The -- the  
6 public comments to the proceeding without much  
7 information of a project, with a set of concerns.  
8 At the risk of oversimplifying, the message they  
9 tend to get from the Commission and Staff is we  
10 hear your concerns, we're going to address them.

11 They then get a set of Staff  
12 assessments, and ultimately a Commission decision  
13 that in essence say, assuming a project is  
14 approved, and what I'm about to say is true for a  
15 particular project, but in the cases that have  
16 been approved, to essentially say the project does  
17 meet applicable law, it doesn't have significant  
18 adverse impacts.

19 I think the public has a question in its  
20 mind, nonetheless, about what are we getting out  
21 of this. And I think there needs to be a way to  
22 articulate that, without necessarily fundamentally  
23 changing the land use test --

24 PRESIDING MEMBER LAURIE: Let me offer a  
25 thought in regards to that. And I think it's a

1       valid point.

2                   You have far more experience than I in  
3       Energy Commission activities, but I do know that  
4       starting from my time at the Commission in early  
5       1997, dereg had passed but not as yet been  
6       implemented. That any thought that the Energy  
7       Commission from that time on was going to do any  
8       planning, was going to do any development of  
9       criteria, was to do any thought about what would  
10      be a good plant and a bad plant, what would be  
11      good for the people of the state as far as types  
12      of plant, locations of plant, we were explicitly  
13      told that that is no longer our responsibility;  
14      that, quote, the market, will plan, end quote.

15                  I respectfully disagreed with that, and  
16      I disagree with it today, but I also find that I  
17      think perceptions have changed, and folks are  
18      starting to ask -- some of those same people are  
19      starting to ask well, who's planning all this,  
20      because I think there's a recognition that the  
21      competitive market is not inconsistent with  
22      development of goals, for example, or even  
23      criteria.

24                  And so I think the reason that it's  
25      approached from a negative perspective is because

1       that's the standard that -- it's the only standard  
2       we have to go by. Because there is no energy  
3       general plan that has good things and bad things,  
4       and suggests that this is a good kind of plant we  
5       like to see, and -- and we really don't want to  
6       see it there. So there is no selling point.

7               I would expect that over time, as  
8       contemplation is given to -- I won't call it  
9       general plan, but as contained in Assemblyman  
10      Richman's bill, thought being given to proper  
11      elements of where a power plant should go. The  
12      Energy Commission is then free to say, well, we  
13      think this is good because we've thought about it,  
14      and this meets the criteria that we have  
15      previously contemplated.

16             Currently, we don't have that.  
17      Currently, our only measurement is negative. And  
18      I agree and understand your issue, and I expect  
19      that to change over time, as our -- as our own  
20      perspectives change over time.

21             MR. ELLISON: I agree with very much of  
22      that. Let me say I wouldn't go so far as to try  
23      and reinstate -- in fact, even in the Commission's  
24      pre-deregulation days, the Commission was  
25      specifically and explicitly barred by statute from



1       adopting a centralized resource plan, and I don't  
2       think we need to do that. But --

3               PRESIDING MEMBER LAURIE: No, I don't  
4       think we are barred by statute. We are barred --  
5       we were barred by threat of guillotine.

6               (Laughter.)

7               MR. ELLISON: And I understand that.  
8       Believe me, I'm not -- I'm not suggesting in any  
9       way that this is a criticism of the Commission.  
10      It is an observation about the process, and it's  
11      perception from, I think, the public's point of  
12      view, if I could be so bold as to take that role.

13              The -- the thing that I think is  
14      important here is -- and if you want, look at it  
15      in a legalistic sense, under CEQA the Commission  
16      is required to examine the no project alternative.  
17      And the way that we -- we have in some cases tried  
18      to present some of these issues is in that  
19      context, to say, okay, here are a set of benefits  
20      that will not occur under the no project  
21      alternative. And I think the Commission is  
22      entitled to look at that.

23              We have met with some resistance here at  
24      the Commission when we have proposed doing that.  
25      And we have proposed doing it not in the sense of

1 asking for any regulatory credit for any of those  
2 benefits. In fact, we are specifically not  
3 wanting any regulatory benefit from it.

4 But rather, from the perspective of  
5 trying to create a more balanced set of  
6 information that's conveyed to the -- to the  
7 public. You know, if -- if the best that you can  
8 do in a licensing process from the public's  
9 perspective is at the end of the day satisfy them  
10 that this project is not going to harm you and  
11 your children, if that's the best possible  
12 outcome, that still is not very good. I mean, if  
13 -- if in fact there are a set of reasons that --  
14 and I -- and I say this because I feel strongly  
15 that many of these projects, when you look at the  
16 entire electric system, modernizing California's  
17 electric system has some very important benefits  
18 to the public --

19 PRESIDING MEMBER LAURIE: Well, you  
20 can't -- you can't possibly be suggesting that the  
21 Energy Commission argue in a positive fashion that  
22 any given project is good because it's provided --  
23 it's providing needed power.

24 (Laughter.)

25 PRESIDING MEMBER LAURIE: Is that what

1       you're suggesting, Mr. Ellison?

2               MR. ELLISON: I am certainly aware of  
3       the history of that issue, Commissioner, and SB  
4       110.

5               The -- actually, no. I mean, that --  
6       that is not the specific types of benefits that we  
7       were -- that we have in some cases tried to put  
8       forward. The -- to be precise, since we're having  
9       this conversation, we, in the -- in the Sutter  
10      case, presented system production cost modeling,  
11      testimony on the air quality benefits above and  
12      beyond any offsets of the displacement of older  
13      generation in the marketplace by newer, more  
14      modern and more -- less polluting generation.

15              That is one possibility. There -- there  
16      are others, and believe me, I am not here  
17      suggesting that somehow there should be a radical  
18      change in the Commission's -- I don't -- again, I  
19      don't think this is fundamentally broken.

20              PRESIDING MEMBER LAURIE: You're just  
21      noting that in some cases, applicants do go above  
22      and beyond just meeting the law to provide added  
23      benefits, and you feel that honorable mention is  
24      not often enough given.

25              MR. ELLISON: That's right. And -- and

1       also, I think, again, just as an observer of the  
2       process, I think one of the most frustrating  
3       things that -- that if I were a member of the  
4       public I think I would have, would be asking those  
5       questions and not getting answers.

6               And so the -- the challenge that I put  
7       in front of all of us is on the one hand, how can  
8       we have an appropriate regulatory structure that  
9       doesn't over-regulate, and I think that's a  
10      legitimate concern. But at the same time, answers  
11      those questions to the extent that they are  
12      legitimate questions.

13             And I don't pretend to be the know-all,  
14      see-all person with the answer to that. I'm not.  
15      But I think it's a legitimate question. And I  
16      think it's a conversation that I hope to continue.

17             PRESIDING MEMBER LAURIE: Very good.  
18      Thank you, Chris, very much.

19             Before I call again on Mr. Fuz -- Greg,  
20      ks that how you pronounce your last name? Thank  
21      you.

22             Joan Wood has asked to make a public  
23      comment, and she has a time problem. Ms. Wood,  
24      would you like to offer comment at this time?

25             MS. WOOD: Yes, thank you.

1                   My name is Joan Wood, and I'm a small  
2                   farm owner in Sutter County. And a lot of things  
3                   I'm interested in have been touched on, and some  
4                   of them very, very well by previous speakers.

5                   I wasn't notified of the Sutter Power  
6                   Project whatsoever, although it's perfectly clear  
7                   that my farming enterprise is eventually going to  
8                   be affected by it, and has already. There are  
9                   signs of it, because of the rezoning.

10                  We spent two or three years in Sutter  
11                  County enacting a general plan, and it was finally  
12                  put into place in 1996. And a previous speaker  
13                  here, it might've been Dr. Mason, said that the  
14                  applicant for the Sutter Power Project had entered  
15                  into conversation with the county way before the  
16                  certification process started, so that would be in  
17                  '97. And it did appear to many of us as if it was  
18                  already established where they were going to put  
19                  the power plant, and that the rezoning would take  
20                  place, and usually, and this has been commented on  
21                  also, the whole certification process took place,  
22                  12 months of it, and then it was extended because  
23                  of the new issue that the intervenor brought up  
24                  about crop dusting being affected by the power  
25                  lines. And so the rezoning vote didn't happen for

1       three months after the end of the certification  
2       period.

3               I wasn't notified anything, even though  
4       I'm a property owner. One of my farms is about  
5       three-quarters of a mile away from the site, but a  
6       housewife who lives in Roseville paid for a  
7       property owner's book, and she notified us by a  
8       flyer, every property owner in the county, that  
9       our interests were affected by this rezoning of  
10      agricultural land to industrial land.

11             And so I showed up at the supervisors  
12      meeting, and it -- one kind of got the impression  
13      that the supervisors had already made up their  
14      mind. And then to hear the comment today that the  
15      applicant had entered into discussions with the  
16      county in the previous year, just kind of confirms  
17      what we knew.

18             Be that as it may, I only want to  
19      request that some thought be given to notifying  
20      affected people, even if they don't clearly live  
21      next to the site. There are only six householders  
22      that live near the site, and I'm sure they were  
23      notified.

24             The other point that I want to harp on  
25      is that I don't think -- I think that urban

1 interests are thought about when there's an  
2 application for an energy producer, but I think  
3 the farmers get very short shrift, and partly it's  
4 the farmers' fault. It's always been very  
5 difficult to organize farmers. They're afraid of  
6 change, they're afraid of government, they're  
7 afraid of being organized.

8 (Laughter.)

9 MS. WOOD: We only had one intervenor in  
10 Sutter County, or -- it was a man and his wife,  
11 and they were sponsored by the Farm Bureau. I  
12 think this is public knowledge, I don't think I'm  
13 revealing anything. Very late in the process, of  
14 the 12 month process, two members of the board of  
15 directors of the Farm Bureau realized there was a  
16 great deal of money to be made from selling  
17 emission reduction credits, which many of us  
18 owners like me never heard of, and I found out  
19 later I have them. I didn't know I had them. But  
20 the two directors persuaded the rest of the Farm  
21 Bureau, in a secret, night time meeting, to dump  
22 the intervenor overboard, and so they did. He did  
23 continue to represent the populous, but it's just  
24 food for thought about what -- what can go on.

25 I'm not expecting that the Energy

1 Commission can really protect us. I'm just asking  
2 for better notification, because after that  
3 rezoning took place, the applicant is -- the plant  
4 is going to open in a couple of months. They  
5 subsequently, after that, 77 acres was rezoned and  
6 taken out of production. I think it was already  
7 out of production. They've now bought 165 acre  
8 farm that's actively producing right next door,  
9 and they're planning to ask for an airstrip, and I  
10 wouldn't want to bet against it being approved at  
11 some level.

12 And the power lines, the four and a half  
13 miles of power lines that were strung as a result  
14 of this project, that ended up in eminent domain  
15 being enacted against a third farming parcel that  
16 is -- that is nearby.

17 Many of the people that have talked here  
18 are intimately involved in the Sutter Power  
19 Project. I'm glad that it's realized that it was  
20 a -- led the stalking horse for everything else  
21 that happened.

22 Particularly, our planning director, I'd  
23 like to refute a couple of things that he said,  
24 Tom Last. He said very clearly that had this  
25 project been proposed in the industrially zoned



1 section of our county, that the same protesters  
2 would've protested. And that simply is not true,  
3 because I want to point out to you that about 14  
4 months ago, a company called Sysco -- I think it's  
5 S-y-s-c-o, it's not the other Cisco -- they  
6 applied to build some enormous industrial plant in  
7 south Sutter County, and it just went right  
8 through all the permitting process. He complained  
9 about the number of meetings, and Ms. Mendonca had  
10 also pointed out that maybe that's an unfair  
11 criticism.

12 And I think Mr. Last said that the  
13 intervenors kept bringing up the same subject in  
14 every meeting. Well, of course they did. You  
15 know. I mean, somebody should've paid attention  
16 to that.

17 And then comes the famous -- the federal  
18 permitting, and I'm sure that several people here  
19 are aware that I'm accused of impeding progress  
20 because I did file a protest about their federal  
21 pollution permit. And a judge in Washington  
22 noticed it, and decided that there was enough  
23 merit in the various exhibits that I had presented  
24 to put a stop work on the company.

25 I'd like to give you a little

1 background. After a lot of research, I found out  
2 that the applicant had applied for that federal  
3 permit --

4 PRESIDING MEMBER LAURIE: Ms. Wood, let  
5 me -- let me interrupt, because the -- we --  
6 there's no purpose today in talking about the  
7 Sutter project, except as it relates to our  
8 process as a whole. So I -- I certainly  
9 understand that you have grievances regarding the  
10 outcome of that project. What -- what we need to  
11 spend our time on today, and the purpose for this  
12 afternoon's session, is to talk about, in part,  
13 how the process as a whole can be improved.

14 So if you can point your comments to the  
15 overall process, as opposed to the specific  
16 outcome of Sutter, it would be helpful.

17 MS. WOOD: Three of the previous  
18 speakers have mentioned the federal permit. Could  
19 I continue?

20 PRESIDING MEMBER LAURIE: You can  
21 continue for a few moments. Yes, ma'am.

22 MS. WOOD: Thank you. The applicant had  
23 applied for that in March of '98. That was early  
24 in their one year process. And I do not, I've  
25 never known the reasons why it was delayed. It

1       was delayed 16 months. I have subsequently talked  
2       to other intervenors with other projects, and no  
3       other power plant had its federal permit delayed  
4       like that. I have no idea why.

5               I came so late into the process that the  
6       only opportunity I had to protest anything was  
7       that pollution permit. They received the zoning  
8       March the 15th, and this federal permit wasn't  
9       published until June. So they -- I had 30 days to  
10      protest, and the wording of the -- the public  
11      notice said that if there was significant protest,  
12      nobody was more surprised than myself that one  
13      letter to -- to Washington caused the judge to put  
14      a stop work on it.

15             In spite of what's been in the paper,  
16      and implied here, the only delay to the applicant  
17      was six weeks, because the Energy Commission had  
18      assigned a man to oversee the project, and after  
19      six weeks had gone by -- this was around August  
20      23rd of '99 -- they stopped for six weeks, and  
21      then they started again. They only stopped for  
22      six weeks. And the -- Mr. Munro, I think was his  
23      name, the supervisor from the Energy Commission.  
24      He said that they were allowed to do pre-permanent  
25      -- not permanent structures. I -- I don't know

1        what they were doing. But anyway, the delay went  
2        on three and a half months, but they actually only  
3        stopped working for six weeks.

4                So I'd like to clear my name a little  
5        bit, because I've been a bit pilloried in the  
6        paper as -- and before Congress, actually, as, you  
7        know, somebody with her own agenda, who lived a  
8        hundred miles away. Yes, I have a rented  
9        apartment, and I don't live on my farm, but --  
10       also, I -- I raised issues on that federal permit  
11       that had not previously been seen. But  
12       eventually, it was thrown out because I had a  
13       year, which I didn't know those workshops were  
14       taking place.

15               This is why I want to again reiterate  
16       that you should notify people who are indirectly  
17       affected, because it's -- it accelerated the  
18       demise of farming in Sutter County by this  
19       rezoning, and there have been other rezonings  
20       since then that are taking agricultural land out  
21       of production.

22               So I'm just speaking up for farming.  
23       And it's not clear to me. There -- there is a  
24       Department of Conservation, a State Department of  
25       Conservation, and there's some possibility that

1        maybe they should be notified about these power  
2        plants, because I think they're involved somehow  
3        with land use, also. I don't know if you already  
4        do that or not.

5                    That's all I have to say. Thank you.

6                    PRESIDING MEMBER LAURIE: Thank you, Ms.  
7        Wood, very much.

8                    Mr. Fuz.

9                    MR. FUZ: Thank you, Commissioner  
10       Laurie, and other Commissioners, Advisors.

11                   Rick, can you put up that overhead?

12                   Well, it's pretty small, but --

13                   (Laughter.)

14                   MR. FUZ: I -- it may look longer than  
15       it will actually be, so --

16                   PRESIDING MEMBER LAURIE: Can we get  
17       hard copies of this, Mr. Buell? Thank you.

18                   MR. FUZ: Sure. I'll keep this  
19       relatively brief.

20                   This is really just a continuation of  
21       the theme that I talked about this morning, which  
22       goes to the issue of what a local agency can do  
23       early in the process to streamline the overall  
24       review process, and assist in your Commission's  
25       efforts to process these types of projects in a --

1 in a more timely manner, recognizing local  
2 concerns and effectively dealing with them.

3 And what I wanted to spend a little bit  
4 of time on today is touching on what we've done in  
5 the particular case of Morro Bay, just to throw  
6 that example out there as one that can maybe  
7 provoke further thought and discussion, as far as  
8 its applicability to other situations.

9 The first point I'd like to touch on is,  
10 again, the need for early consultation to evaluate  
11 and determine the potential for fatal flaws in a  
12 project of this nature. And again, the key to  
13 doing that is providing for adequate resources for  
14 early local agency participation, so that the  
15 local agency can work with the Energy Commission  
16 to involve stakeholders in the area, involve  
17 participants from within the government agency, as  
18 well as members of the general public, and get  
19 their early feedback in terms of, you know, are  
20 there -- are there any particular fatal flaws with  
21 the applicant's proposal.

22 And as you may recall from the visuals  
23 that I showed earlier this morning, if you compare  
24 the original proposal that was submitted, which  
25 really didn't have the benefit of this type of

1       early consultation, to the one that ultimately  
2       resulted, you can see the benefit of going through  
3       that kind of a process.

4               The next point, local agency assistance  
5       in organizing public involvement is really the  
6       next step in that process. And I want to echo  
7       what Mr. James said earlier. The Energy  
8       Commission should tap in to the resources that are  
9       available through local agencies, because we do  
10      understand the process and the stakeholders, and  
11      -- and how to effectively shepherd a project  
12      through that labyrinth, so to speak.

13             And some of the things that I  
14      highlighted that the local agency can assist with  
15      in particular are noticing, outreach to interested  
16      parties, finding ways to register and use  
17      feedback. And just some examples of what we did  
18      in -- in Morro Bay, in the -- the pre-application  
19      review period, we, of course, publicized notices  
20      in newspapers of workshops. We did inserts in  
21      newspapers. We did handbills, we did noticing  
22      through water bill mailings. We -- we produced a  
23      video for our public access, our government access  
24      TV channel. Established a Web site. Put out  
25      opinion surveys. Used various feedback forms.

1           We even established an ad hoc committee  
2           that included members of our city council, the  
3           applicant, as well as various other stakeholders,  
4           chamber of commerce, et cetera. And we were able  
5           to do all those things to elicit public comment,  
6           to elicit concerns about fatal flaws in the  
7           project, to help establish an early direction for  
8           the project that would result in a more successful  
9           review process when the project did finally come  
10          to the Energy Commission.

11          So that leads to the next point. The  
12          result of those efforts was to set the project  
13          direction without compromising environmental  
14          concerns. And again, that was all done prior to  
15          submittal of the project to the Energy Commission.  
16          And in Morro Bay, that was done through  
17          development of a memorandum of understanding  
18          between the city and the applicant that -- that  
19          identified key goals and common interests, and --  
20          and particular aspects of the project that were  
21          important to the city.

22          Those were established through a public  
23          process that involved well over a dozen meetings,  
24          more like 15 to 20 meetings in a several month  
25          period, where, again, through that process,



1 through the community's involvement, we were able  
2 to establish a project direction very early on,  
3 but still provide for full environmental review.

4 Part of that project direction was to  
5 provide for a pre-application process. That was  
6 in addition to the MOU. The MOU established a  
7 road map for the process, then we had a much more  
8 detailed pre-application process. The results of  
9 that have been provided to your Staff, and  
10 essentially provided a checklist that your Staff  
11 can use to -- in reviewing the application once it  
12 did come in, to see if it really addressed all  
13 issues of local concern.

14 Other things that the city did prior to  
15 the application being submitted were to sponsor an  
16 advisory ballot measure. And that was really the  
17 culmination of all of these early efforts, the  
18 early consultation, the early notice and  
19 workshops, developing the project direction to the  
20 MOU. After all those efforts, the city sponsored  
21 a ballot measure to find out if all these efforts  
22 really did register with the community, to see if  
23 there was broad community support for this new  
24 direction.

25 And that was all done prior to the -- to

1 the revised project being submitted to your -- to  
2 your Commission.

3 So there's a lot that can be done early  
4 on by local agencies to effectively help the  
5 applicants, as well as the community, work  
6 together to establish a project that can really be  
7 a WOW project instead of a LULU.

8 And the other points on the outline, I  
9 just want to touch on quickly, are areas where the  
10 local agency can continue to work with your Staff  
11 once the application is submitted. And those, you  
12 know, we've talked about at length this morning,  
13 involve local land use considerations. I won't  
14 get into those.

15 But another key area is interagency  
16 coordination. And I want to go beyond just  
17 agencies, because in our particular area there are  
18 a number of organizations that the city, for  
19 example, is very familiar with and works with on a  
20 regular basis, but the Energy Commission may not  
21 be. Those include a national estuary program,  
22 various environmental groups, you know, there's a  
23 whole host of agencies that the city can  
24 essentially act as a liaison to for Energy  
25 Commission Staff, and it's something that I think

1       can help streamline your process and make it a  
2       more effective process.

3               The Morro Bay project happens to be in  
4       the Coastal Zone, and that raises a whole 'nother  
5       unique set of issues and coordination issues with  
6       the Coastal Commission. And the city is in a  
7       unique position to again act as a liaison between  
8       the Energy Commission and the Coastal Commission,  
9       and, you know, we -- we think that's a valuable  
10      function to address issues like coastal access and  
11      recreation, resolving any potential conflicts  
12      between priority coastal dependent uses,  
13      addressing scenic highway issues, validating and  
14      confirming power plant siting designations.

15             So another area where I think through  
16      cooperation with the local agency and the CEC  
17      Staff, the process can certainly be made much more  
18      effective and -- and much more timely.

19             And finally, the tail end of the process  
20      which we hope to get to at some point in Morro  
21      Bay, we're getting closer and closer every --  
22      every month, that is in the end, once -- once a  
23      project is certified by your Commission, I think  
24      there's still a strong role for the local agency  
25      and a strong desire to be involved in permit

1 compliance issues, for example. It's an area  
2 where local agencies typically spend a lot of time  
3 in projects that are solely within their  
4 jurisdiction, to make sure that the conditions  
5 that they impose and that are placed on projects  
6 for very legitimate purposes to address community  
7 issues get carried through, and -- and are  
8 followed through on.

9 We look forward to working with  
10 Commission Staff to ensure that there is an  
11 appropriate role for the city in that respect,  
12 because, number one, it I think improves the level  
13 of confidence that the community and the city  
14 council has that there is a local presence in that  
15 enforcement process, there's somebody local they  
16 can go to, to ensure that their concerns are being  
17 addressed. It's not just someone from Sacramento.

18 And, again, we think a local liaison  
19 would provide a valuable coordination function at  
20 that stage of the process.

21 So that concludes my presentation. Just  
22 some examples, again, of procedures that we've  
23 been following in Morro Bay, and hopefully may  
24 have some applicability in other situations  
25 throughout the state.

1 Thank you.

2 PRESIDING MEMBER LAURIE: Great. Thank  
3 you, Greg, very much. And I appreciate you  
4 sticking around for this afternoon's panel, as  
5 well. Very helpful.

6 Mark Wolfe, from CURE. Afternoon, sir.  
7 Thank you for being so patient.

8 MR. WOLFE: Good afternoon. Thank you,  
9 Commissioners.

10 To give you some background of my  
11 perspective, I've been employed in my current firm  
12 representing CURE before this body for --

13 PRESIDING MEMBER LAURIE: For the  
14 record, can you explain CURE, please.

15 MR. WOLFE: I'm sorry. CURE is an  
16 acronym standing for the California Unions for  
17 Reliable Energy. We are a coalition of unions  
18 that build, operate, and maintain power plants,  
19 and we represent locals up and down the state, and  
20 so far every local jurisdiction where a power  
21 plant has been proposed.

22 Prior to taking my position representing  
23 CURE at this firm, before this I spent six years  
24 as a staff attorney at a small, non-profit  
25 environmental group in San Francisco, and I feel

1       like I've at least been exposed to, if not  
2       directly participated in what feels like every  
3       possible permitting process, local, state, and  
4       federal, in the book. Everything ranging from  
5       NPDES permits to forestry, to hydro licensing, to  
6       endangered species. And I have to say without  
7       hesitation that the public participation process  
8       that I see here at this body is by and far the  
9       best. And when I say best, I mean that both in  
10      terms of the sense that we, as representatives,  
11      intervenors, get that our participation actually  
12      contributes something, that what we express is  
13      absorbed by the Staff and by the Commission. And,  
14      in fact, in many cases, implemented.

15               But also, the tangible benefits and the  
16      intangible benefits that I perceive our  
17      participation and the participation of other  
18      intervenors is actually producing. And when I say  
19      tangible and intangible benefits, I think it's  
20      important to keep in mind that when you're  
21      considering the merits of this agency's public  
22      participation system, it may be more easy to  
23      perceive the costs in terms of time and  
24      efficiency. That is, to perceive many benefits.  
25      I think the fact that we have this trial-like

1 evidence gathering process where intervenors get  
2 to present witnesses and cross examine Staff, et  
3 cetera, et cetera, takes a lot of time. It takes  
4 certainly a lot more time than it would if we were  
5 just doing a standard CEQA notice and comment  
6 process.

7 That costs the applicants time and  
8 money, of course, and may not always lead to an  
9 expeditious decision, and may not even ultimately  
10 affect the substantive outcome. But nevertheless,  
11 we strongly perceive that there's inherent benefit  
12 in the process in and of itself, not just as a  
13 means to an end, but as an end in and of itself.  
14 And I was working on another case, and read the  
15 famous California Supreme Court decision, the  
16 Laurel Heights case, which you're probably  
17 familiar with.

18 And in that case, the State Supreme  
19 Court, talking about the importance of the CEQA  
20 process, said that the CEQA process protects not  
21 only the environment, but also informs self  
22 government. And I think that's really true. I  
23 don't think that's a hollow platitude. I think  
24 that public participation, meaningful public  
25 participation, and government decision making

1       affecting shared public resources, really is a  
2       hallmark of, you know, important democratic  
3       principle, frankly.

4               And for that reason, I think that the  
5       benefits of the current process, and I would agree  
6       wholeheartedly with Mr. Ellison that this system  
7       is not fundamentally broken. It ain't broken, I  
8       don't think it needs radical fixing, as a result.  
9       The benefits of this process inure not just in  
10      terms of changes to projects that satisfy local  
11      citizens or result in tangible environmental  
12      improvements, but something more that is frankly  
13      difficult for me to describe or put my finger on,  
14      but it's just the benefit that accrues from the  
15      sense that the public does have a meaningful  
16      voice, is an active participant in these very  
17      important, very serious and very complicated  
18      decisions, and that they have the type of direct  
19      access to the decision maker that this process  
20      affords.

21             Now, with that said, I would just  
22      highlight some tangible, very easy to point to  
23      benefits of intervenor participation, and I'm  
24      thinking in particular of the environmental  
25      settlements that we, CURE and other intervenors,



1       have obtained from project applicants. I have a  
2       long list, but in the interests of time I'll just  
3       focus on the Three Mountain case, with which  
4       you're intimately familiar, Commissioner Laurie.

5               PRESIDING MEMBER LAURIE: Wait a minute.  
6       I don't know if I want you to do that.

7               MR. WOLFE: Oh, I'm sorry, I --

8               PRESIDING MEMBER LAURIE: We're -- we're  
9       still working on Three Mountain.

10              MR. WOLFE: High Desert. Okay.

11              (Laughter.)

12              MR. WOLFE: I -- the settlement is a  
13       docketed public document that I won't --

14              PRESIDING MEMBER LAURIE: Yeah. The --  
15       the problem, Mark, is if we make specific  
16       reference to it, then we have to go back and --  
17       and comment that I heard you talk about this. I'm  
18       on the Three Mountain Committee, and I don't want  
19       to have to go back and do that.

20              MR. WOLFE: Understood. It's been a  
21       long process.

22              PRESIDING MEMBER LAURIE: Can you take a  
23       look at it, and make generic references to the  
24       subject matters.

25              MR. WOLFE: Sure, and I -- I can

1        actually talk about High Desert. In that case,  
2        the applicant agreed to lower NOx emissions to 2.5  
3        ppm over one hour, down from 3.0. This was before  
4        the -- before CARB issued its fact guidance for  
5        power plants. They've really got a 4.0 ppm for CO  
6        down from six, which is what they proposed. They  
7        agreed to an inter-basin inter-pollutant offset  
8        requirement, or an offset ratio, rather, of 2.1 to  
9        1, and established a water banking system. And in  
10       very general terms, in other cases, the applicants  
11       have agreed to minimize water usage, and to  
12       minimize air emissions beyond what they proposed  
13       in the application.

14                    And I would like to think that as a  
15       result of this, at least in the modicum of the  
16       Staff's time, and certainly the Commission's time,  
17       maybe it was freed up to focus on other issues.  
18       Once the applicant agreed with an intervenor,  
19       indicate to a certain level, that issue was either  
20       taken completely off the table, or at least the  
21       size of the piece that remained on the table was  
22       made substantially smaller.

23                    PRESIDING MEMBER LAURIE: I wish they  
24       would've also have agreed to actually build the  
25       plant.

1 MR. WOLFE: In which case?

2 PRESIDING MEMBER LAURIE: High Desert.

3 MR. WOLFE: They just started, I -- I  
4 heard.

5 PRESIDING MEMBER LAURIE: No. News --  
6 news to me.

7 MR. BUELL: My understanding, they plan  
8 to start in April.

9 PRESIDING MEMBER LAURIE: April 2000 --

10 MR. BUELL: And one.

11 PRESIDING MEMBER LAURIE: Thank you.

12 MR. WOLFE: So just to wrap up, you  
13 know, with these both tangible and intangible  
14 benefits in mind, you know, the crisis that we're  
15 facing right now will be solved, we feel. We also  
16 feel that this process of public participation  
17 that exists at the Commission, in all candor, has  
18 nothing to do with getting us into the mess.  
19 Others will disagree, I'm sure, but that's --  
20 that's our feeling.

21 We believe that it would be short-  
22 sighted, quite frankly, to cut or undermine or  
23 permanently reduce the potency of the existing  
24 public participation provisions, because of the  
25 current crisis. It may be appropriate to -- to

1       alter them on a temporary basis. That's not for  
2       us to discuss here today. But the benefits that  
3       I've identified I think are longstanding. The  
4       might not be realized until very far in the  
5       future, and it would be a great risk, we feel, to  
6       undermine them now for the sake of -- of sheer  
7       expediency in the current state of crisis.

8               We're not downplaying the importance of  
9       it, by any stretch of the imagination. We're just  
10      trying to remain mindful of the degree and extent  
11      of the benefits that the process produces, that  
12      might not be immediately evident.

13             Thank you.

14             PRESIDING MEMBER LAURIE: Excellent.  
15      Thank you, Mark, very much. We appreciate you  
16      folks taking the time to come over.

17             Comment, from panel members, from the  
18      public.

19             Sir. Dr. Mason, thank you.

20             DR. MASON: I wanted to make another  
21      comment based upon some of what Chris said, and  
22      some of what you said.

23             In terms of the process and whether or  
24      not it's broken or not, I was reflecting a bit on  
25      the Nuclear Regulatory licensing process, which

1       also has its public dimension. And it has a  
2       process like this process that operates  
3       essentially in a fishbowl. Few secrets,  
4       disclosure, it goes back to what Chris said. We'd  
5       like to believe the process is going to yield a  
6       fair, objective assessment of the -- of the  
7       applicant's proposed project, and that both  
8       technically -- well, technically, it's -- it meets  
9       all the standards of criteria for public health,  
10      safety, that type of thing.

11               So in a sense, there's a -- there's a  
12      parallel here that for other reasons the nuclear  
13      industry tended to diminish, but the process that  
14      I am referring to was basically pretty sound. And  
15      so that's why I think the outcome of -- of a  
16      clear, objective process that discloses facts,  
17      lets those facts rise to the surface, and those  
18      become the basis for the Commission decision, is  
19      very important.

20               And also, there was some other thought  
21      that I had on this. Oh, the hearing process. I  
22      was involved in Diablo Canyon and the TVA program,  
23      looking at all sorts of issues related to health,  
24      safety, environment, there were thousands of  
25      issues. When I sit back and look at how these

1       were handled, it was -- it was amazing, on Diablo  
2       Canyon, for example, there were hearings that were  
3       conducted over design quality assurance and  
4       construction quality assurance that lasted no more  
5       than -- well, the design ones lasted probably two  
6       weeks, max. The construction hearings lasted  
7       about a week. They had pre-filed documents, and  
8       then it went into kind of a -- they had a  
9       Administrative Law Judge in charge of -- of --  
10      appointed by the Commission.

11               And so I guess what I'm saying is that  
12      -- that I, comparing our process for the Energy  
13      Commission and the nuclear experience that I have,  
14      it seems like it's doable to stick with our  
15      process here, focus the issues, move forward,  
16      still have the disclosure, don't lose any of the  
17      qualities that are here, but I'd like to believe  
18      that issues could be narrowed and the -- the  
19      hearing process could be not truncated, but  
20      somehow improved.

21               And so my suggestion is if you get an  
22      occasion, you might have a conversation or two  
23      with -- with some folks over at the Nuclear  
24      Regulatory Commission, kind of on their process,  
25      how -- how they handled things when they were

1       handling them, and there may be some -- some  
2       pointers there.

3               PRESIDING MEMBER LAURIE: Well,  
4       unbeknownst to the rest of the world, and to the  
5       chagrin of those few who do know, I am  
6       California's liaison to the NRC. And so I have  
7       become familiar with their processes.

8               DR. MASON: Okay. Well, thank you.

9               PRESIDING MEMBER LAURIE: Thank you,  
10       sir.

11              Mr. Ellison.

12              MR. ELLISON: Two things. One is, you  
13       know, there's a great deal of sort of rhetorical  
14       discussion on all sides about different ways of  
15       doing land use permitting. I -- I think it would  
16       be a very informative exercise, and I don't know  
17       how it would come out, by the way, but I think it  
18       would be a very informative exercise for the  
19       Commission, perhaps as part of this investigation,  
20       or in some other format, to do some explicit  
21       comparisons on certain key parameters between its  
22       process and other similar processes in other  
23       states, or in California. Perhaps compare its  
24       process to -- to projects, thermal power plants  
25       under 50 megawatts. Perhaps -- the Northwest

1       Power Planning Council is a similar agency in some  
2       ways, you could look at that, the NRC, that sort  
3       of thing.

4               The comparison I think would be useful  
5       would be, obviously, how long the process took.  
6       But also some other, you know, if there are  
7       measures of, you know, public and intervenor  
8       satisfaction with the process, such as litigation  
9       over it. One of the things that's often said  
10      about the Energy Commission process is it may be  
11      long and complicated, but at the end of the day  
12      you have a permit that, you know, you're not  
13      subject to a lot of litigation.

14             Is that true? I don't know. I mean, I  
15      really don't know, I mean relative to other  
16      processes. But I think those questions are  
17      empirical, and -- and, you know, it'd be  
18      worthwhile looking at that.

19             PRESIDING MEMBER LAURIE: I think it's a  
20      valid point. My -- and reflecting on the point,  
21      I'd only comment that in order for a person or an  
22      entity to take an opportunity to reflect so as to  
23      allow themselves to be improved, I think they have  
24      to have a degree of security and confidence about  
25      them. I don't think there's any question that --



1       that since February of 1997, when I got here, to  
2       today, the Commission's siting process remains  
3       paranoid about legislative response, about  
4       gubernatorial response, to the even existence of  
5       the process itself.

6               So I don't know what happened before  
7       1997, but certainly in the last four years. I  
8       think it's only been very recently that, as a  
9       personality, the Energy Commission has felt secure  
10      enough and confident enough in itself to engage  
11      upon a process of improvement. Before that, it  
12      was a question of finding a rock big enough to  
13      hide behind. And -- and so I understand, from a  
14      human perspective, of -- of why we have been  
15      afraid to ask some of those questions.

16             And I think we're in a position of  
17      greater strength internally today than we -- we  
18      have been for a long time. But I think there  
19      still remains that degree of concern. Every time  
20      a legislative session terminates, you can just  
21      feel the exhaustion and relief that we still  
22      exist.

23             Mr. Wolfe.

24             MR. WOLFE: I was just going to raise  
25      the point. I wasn't around, obviously, when

1        Warren-Alquist was enacted, but it creates the  
2        mechanism that essentially removes the final  
3        decision from the local agency. And I think there  
4        are legitimate reasons why the process differs  
5        from the normal CEQA process that's implemented at  
6        the purely local level. And I think the key  
7        distinction is political accountability.

8                If your city council or your planning  
9        commission adopts a CEQA document, approves a  
10       project on the face of a record that has  
11       absolutely, you know, no showing that there is  
12       actually no significant impact, in theory, anyway,  
13       those people are going to be accountable at the  
14       next election, whereas, obviously, the Energy  
15       Commission simply isn't.

16               And I think that weighs in favor of a  
17       more comprehensive process.

18               PRESIDING MEMBER LAURIE: Yes, I agree.  
19       I'm very conscious of the fact, especially being a  
20       local government person, that -- I think the  
21       statement is correct, that the better government  
22       -- well, no, I better not say that. That when --  
23       the more local the government, the better the  
24       people have an opportunity to participate.

25               So I, for one, am extremely cognizant of

1 the fact that we're the state, and, because we're  
2 the state, not subject to direct accountability to  
3 the people, that there is an additional obligation  
4 to provide for access.

5 Additional public comment?

6 If not, I thank you very much. We have  
7 one more workshop on the issue of -- I believe  
8 it's transmission?

9 MR. TOMASHEFSKY: Two.

10 PRESIDING MEMBER LAURIE: We have two  
11 more?

12 MR. BUELL: Two more workshops.

13 PRESIDING MEMBER LAURIE: Okay, we have  
14 transmission and federal --

15 MR. BUELL: The timing of federal  
16 permits. Transmission line will be a week from  
17 today, at the same location. And we have the 27th  
18 for federal permits.

19 PRESIDING MEMBER LAURIE: Very good.

20 Thank you, Rick.

21 Ladies and gentlemen, thank you very  
22 much.

23 (Thereupon the workshop was  
24 concluded at 3:26 p.m.)

25

## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Workshop; that it was thereafter transcribed in to typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Workshop, nor in any way interested in the outcome of said Workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of March, 2001.

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